UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.990
5 October 1990

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Thirty-ninth session

SUMMARY RECORD OF THE 990th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 16 July 1990, at 10 a.m.

Chairman: Mr. LALLAH

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GE.90-16636/2452B

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Tunisia (CCPR/C/52/Add.5)

1. At the invitation of the Chairman, Mrs. Lyagoubi Ouahchi, Mr. Hamed Abed, Mr. Tahar Fellous, Mr. Hedi Amamou and Mr. Ali Ben Malek (Tunisia) took places at the Committee table.

2. Mrs. LYAGOUBI OUAHCHI (Tunisia), introducing the high-level delegation accompanying her, said that the support given by the Tunisian Government to the work of the United Nations reflected the importance that Tunisia attached to defending moral and human ideals and values as well as strengthening democracy and respect for human rights throughout the world. Since 7 November 1987, a process of democratization had been under way in Tunisia and the country had thus remained faithful to its ancestral values of tolerance, openness and progressiveness. The constant search for a balance between its own identity and the demands of modern life had guided Tunisia's actions and the country was firmly resolved to contribute to national and international efforts to promote and protect human rights.

3. Mr. ABED (Tunisia) welcomed the opportunity afforded to his delegation to pursue the constructive dialogue which it had begun with the Committee in 1987, when Tunisia's second periodic report had been submitted.

4. Since 7 November 1987, when Mr. Zine El Abidine Ben Ali had become President of the Tunisian Republic, Tunisia had resolutely embarked on a path of promoting human rights and individual freedoms, respecting its own tradition of openness and tolerance. One third of the State budget was currently earmarked for social expenditure in the health, education and culture sectors and, in the legal field, the Constitution guaranteed all individiduals living on Tunisian territory all their fundamental rights irrespective of race, colour, religion, sex, political opinion or language. Furthermore, a number of commissions had been entrusted with the task of reviewing the text of the main laws in force and ensuring that the provisions of international instruments - immediately applicable under article 32 of the Constitution, which stated that treaties took precedence over national law - were fully respected. These instruments of course included the International Covenant on Civil and Political Rights, which Tunisia had ratified in 1968, but also a large number of other international instruments dealing, in particular, with equality between men and women. Thus, women in Tunisia were now on an equal footing with men in all areas, whether the political, economic, social or cultural fields, in accordance with the preamble and article 6 of the Constitution and with the National Covenant, a document signed on 7 November 1988 which established national sovereignty, a republican régime, pluralism and respect for individual rights. Nevertheless, the socio-cultural environment continued to affect the rights recognized by the legislature and the options available to it, depending on changes in mentality. For example, the social climate did not yet lend itself to changes in the laws of inheritance, under which the son's portion was twice that of the daughter.

5. However, there would be no reversal of the choice of democracy and liberalism, as demonstrated by the enactment of the law on political parties of 3 May 1988. In order to avoid the pitfalls of obscurantism and despotism, the leaders and deputies had taken care to specify that anyone wishing to form a political party must abide by certain rules to ensure that the gains of the past and present would not be lost. Thus, the principles and platforms of parties must outlaw fanaticism, racism and all other forms of discrimination, and it was explicitly forbidden for any party to be based on a particular religion, language, race or region. Furthermore, a special chamber was responsible for hearing possible appeals by citizens who considered that the authorities were infringing the provisions of the law on the formation of political parties, thus ensuring that the constitutional rights of the population were fully respected.

6. The free exercise of religion was guaranteed in article 5 of the Constitution, and the Penal Code severely punished anyone who impeded the free exercise of religion or defiled buildings, monuments or objects used for worship. Similarly, the Press Code punished anyone who deliberately used the press to incite persons to racial or religious hatred.

7. The inalienable rights included the right of association, which was fully guaranteed by article 8 of the Constitution and by the law of 2 August 1988 whereby any denial of that right had to be substantiated and could be appealed against in the Administrative Tribunal. The right to form and join trade unions was also guaranteed by the Constitution for all occupational groups in the private or public sectors, as well as aliens.

8. The Tunisian League for Human Rights was particularly representative of the collective consciousness of the population and was completely independent of the Government and political parties; it voluntarily defended human rights against arbitrariness, violence, intolerance and all other forms of discrimination. Its members were allowed to visit prisoners, and the League was regularly informed by the Government of any bills which concerned individuals' rights. The authorization given on 12 April 1988 to the Tunisian section of Amnesty International to pursue its activities within the framework of the law was irrefutable proof of the openness of the new régime in Tunisia. An example of the determination to give full publicity to violations of human rights was a case currently before the Tunis Court of Appeal involving serious violence resulting in death, in which the police chief of the town of Gaafour was implicated.

9. The Press Code had been amended by the law of 2 August 1988 under which, although the Minister of the Interior could order the seizure of an issue of a periodical if he feared that its circulation might disturb public order, he could no longer suspend that publication; that decision lay within the exclusive purview of the courts. Proof of the fact that freedom of the press was a reality was that 390 foreign periodicals and 108 national periodicals were in circulation in Tunisia.

10. With respect to participation in public life, on 4 May 1990 the Electoral Code had been amended to replace the majority vote by a proportional system, which was a significant step forward as far as the representation of the various political tendencies was concerned.

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11. Among the measures taken in the previous three years that had enabled political stability to be guaranteed while democracy had been consolidated and respect for human rights strengthened, was the law of 26 December 1987, which limited the duration of police custody to four days, renewable once, under the supervision of the Public Prosecutor. The period of pre-trial detention was also restricted. The law of 29 December 1987 had abolished the special court called the Court of State Security, and another law of 29 December 1987 had abolished the post of General Prosecutor of the Republic, his powers being assigned to assistant public prosecutors. The law of 3 May 1988 had abolished the one-party system and, by the law of 11 July 1988, Tunisia had ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without entering any reservations to the very important articles 20 and 21 of that instrument. Other laws passed and measures adopted included the decree of 4 November 1988 governing prisoners' rights, the law of 27 January 1989 abolishing the penalty of forced labour, the setting up of the Arab Human Rights Institute in March 1989, the amnesty granted on 3 July 1989 to persons sentenced for offences of a political nature, which meant that there were no longer any political prisoners in Tunisia, and the fact that since 7 November 1987 no one sentenced to the death penalty had been executed. Furthermore, the law of 18 April 1990 extended the powers of the Constitutional Council created in 1987, which would provide an even better guarantee of respect for fundamental rights. From now on, the President of the Republic would be obliged to consult the Constitutional Council on all draft organic laws and bills concerning fundamental rights.

12. Those measures all represented a movement towards greater democracy and full respect for human rights and confirmed that, in Tunisia, rights and freedoms were among the main concerns and that the country remained true to its tradition of tolerance, co-operation and understanding among peoples.

13. The CHAIRMAN invited the delegation of Tunisia to answer the questions in section I of the list of issues to be taken up in connection with the consideration of the third periodic report of Tunisia, which read:

"I. Constitutional and legal framework within which the Covenant is implemented (art. 2 (2) and (3))

(a) Have there been any cases during the period under review where the provisions of the Covenant were directly invoked before the courts or referred to in court decisions or where a law has been disregarded by a court on the grounds that it was contrary to the Covenant? If so, please provide details.

(b) Have the commissions charged with responsibility, inter alia, for revising the Penal Code, the Code of Penal Procedure and for reforming the status of judges completed their work? Please provide relevant details concerning the nature of the proposed or envisaged revisions and their impact on the enjoyment of the rights contained in the Covenant.

(c) Has the Tunisian League for Human Rights carried out any practical actions, in addition to its consultative activities, to promote and protect the enjoyment of human rights during the period under review? If so, please provide examples. (See para. 8 of the report.)

(d) What impact is the National Covenant expected to have on the implementation of human rights contained in the Covenant?

(e) What are the current prospects of ratification by Tunisia of the Optional Protocol to the Covenant, the possibility of which has been under study for a number of years?"

14. Mr. ABED (Tunisia), replying first of all to the question in subparagraph (a), said that, under article 32 of the Tunisian Constitution, international conventions took precedence over national law from the moment when they were ratified. If a national law was contrary to an international convention, the latter took precedence. Ten commissions had been working for some time on revising various branches of Tunisian legislation to render it more progressive and more democratic, taking into account the evolution of the Tunisian people and their aspirations to democracy.

15. Regarding the status of the International Covenant on Civil and Political Rights, there were internal laws dealing with the subject. For example, under article 2 of the law on political parties, political parties were required to operate within the framework of the Constitution and the law and inter alia to defend human rights as defined by the Constitution and the international conventions ratified by Tunisia. Article 7 of another law concerning medical and scientific experiments referred to the Covenant. In addition, one of the commissions deliberating on the revision of laws had rejected a draft bill on organ transplants on the grounds that certain of its provisions violated the Constitution and the Covenant.

16. As to whether the Covenant had been invoked before the courts or whether a court had disregarded a law on the grounds that it was contrary to the Covenant, he said that his delegation knew of no specific cases where such a situation had arisen. The judges were, however, familiar with the Covenant and would not hesitate to apply it directly if it were invoked expressly as being applicable in a particular case.

17. In response to the question in subparagraph (b) concerning the revision of the different codes, he said that the special commissions were still at work and that he would be happy to communicate the results of their work to the Committee when it was completed. However, the Government had submitted bills that had already been adopted and were being applied regarding police custody, pre-trial detention and the abolition of forced labour. The laws in question took into account the principles set forth in the Covenant.

18. Mr. FELLOUS (Tunisia) replied to the question in section I (c) of the list regarding the Tunisian League for Human Rights. In addition to the consultative relations that existed between the Tunisian League for Human Rights and the Government which were referred to in paragraph 8 of the report of Tunisia (CCPR/C/52/Add.5), and had been elaborated upon in the oral introduction just made, the Government of Tunisia encouraged active co-operation between, on the one hand, the various departments of the Tunisian administration responsible for human rights and public freedoms and, on the other, all associations for the protection of human rights, including the League. The Ministry of the Interior had appointed a senior official, who reported directly to the Minister to receive all complaints and requests of the League and to conduct any inquiries resulting therefrom.

19. Having himself been given that responsibility during the period covered by the third periodic report of Tunisia, he could state that the contacts with the League had always been positive. Those contacts consisted of written communications and of working sessions between the League in the person of one of its vice-presidents and representatives of the Ministry of the Interior with different levels of responsibility. During the period covered by the report, nearly a dozen meetings had been held. Very recently, another Ministry official had been appointed to maintain those contacts.

20. He would give only a few specific examples of the type of action that the Tunisian League for Human Rights had carried out, because an exhaustive list would be too long. Firstly, the League had submitted a passport application on behalf of a large number of persons. Of the 296 cases where passports had been withdrawn and were covered by that application, about 200 had been settled. He explained that in a number of cases, the persons concerned had submitted their passport applications to the League rather than to the Ministry, although there had been no special obstacle to their application being granted.

21. In another case, the League had intervened on behalf of some students when the deferment of their military service had been suspended on the grounds that they had failed to meet the necessary requirements because they had disturbed law and order by fomenting dangerous strikes in the universities and in other establishments of higher education. Those students had therefore been enlisted and the League had obtained deferment of their military service after they had signed a document declaring on their honour that they would not stage any more strikes that had no valid university-related grounds.

22. The third example was an initiative taken by the League to visit detention centres in order to ascertain whether the prison administration was respecting the prison regulations. During one visit to the Tunis Central Prison in December 1988 by the President of the League and several members, including lawyers, psychologists, sociologists and doctors, significant improvements in prison conditions had been noted and the media had reported the League's findings. Lastly, it was the League that had taken the initiative leading to the establishment of the Higher Communication Council mentioned in paragraph 122 of the report.

23. Mr. ABED (Tunisia), replying to the question in subparagraph (d) concerning the impact that the National Covenant was expected to have on the implementation of the human rights contained in the International Covenant on Civil and Political Rights, quoted the following extracts from the National Covenant:

> "... Human rights imply protection of the security of the individual and the safeguarding of his freedom and dignity. That means the prohibition of torture and corporal punishment and the outlawing of all forms of arbitrariness, whether practised by the State, communities or individuals. Human rights also imply protection of the freedom of opinion and expression, freedom of the press and publication, and freedom of religion. Protection of the fundamental freedoms of the individual demands entrenchment of the values of tolerance, prohibition of extremism and violence of any kind, non-interference in the beliefs and personal conduct of others as well as indulgence and forgiveness, so as to ensure the unrestricted exercise of religion ..."

"It is the responsibility of the State to guarantee the other fundamental freedoms such as the freedom of assembly and the freedom to form associations and political parties, provided that those freedoms are exercised within the framework of the law. Such freedoms are restricted only by the requirements of a democratic society, law and order or the rights and freedoms of others and non-allegiance to any foreign party whatever. The principle of equality is no less important than the principle of freedom, in other words equality of citizens, men and women, irrespective of religion, colour, opinion or political allegiance."

24. The extracts he had read out, which covered the principles enshrined in the International Covenant on Civil and Political Rights, were, he felt, a satisfactory reply to the question raised in subparagraph (d).

25. Regarding the following question in subparagraph (e) dealing with the prospects of ratification by Tunisia of the Optional Protocol to the Covenant, he said that Tunisia had acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without entering any reservations. In other words, it had accepted the fact that a measure of control could be exercised on its territory if violations of the Convention were reported. There was no objection, a priori, to the Optional Protocol being ratified by Tunisia; the matter was still under consideration.

26. The CHAIRMAN invited the members of the Committee to ask their questions now that the delegation of Tunisia had made its oral introduction of the report and replied to the questions in Section I of the list, dealing with the constitutional and legal framework within which the Covenant was implemented.

27. Mr. EL-SHAFEI said that the Government of Tunisia should be commended for having submitted its report punctually and very soon after submission of the second periodic report. Furthermore, the calibre of the delegation sent by Tunisia demonstrated that the State party was prepared to maintain a constructive dialogue with the Committee. The actual report (CCPR/C/52/Add.5) was exhaustive and had been drawn up in accordance with the Committee's guidelines. It reflected the favourable developments observed in Tunisia since 7 November 1987. They were positive because they were the outcome of the national reconciliation of the main forces, which had united to improve the lot of Tunisians, strengthen respect for law and create conditions for a democratic system to function properly and for the freedom of all citizens to be guaranteed.

28. The amendments to the Constitution and the new laws enacted since 7 November 1987 were summarized in the report and had been referred to by Mr. Abed in his oral presentation. The release of political prisoners and the permission given to exiles to return home showed that all the guarantees had been provided and all the necessary measures had been taken to ensure respect for the law. The signing of the National Covenant and the authorization of a pluralistic system of political parties would mean greater freedom and showed that Tunisia had opted for a democratic system.

29. One particular point which he wished to clarify was the role of the International Covenant on Civil and Political Rights in Tunisian law. According to article 32 of the Constitution, an international treaty took precedence over other laws from the date of its ratification, but the

Constitution made no reference to the International Covenant. Did that Covenant take precedence over internal legislation? Specifically, were cases of violation of the rights enunciated in the International Covenant appealable in the courts? He also asked what measures had been taken to publicize the provisions of the Covenant and what kind of relationship the Government had with non-governmental organizations concerned with the defence of human rights.

30. Mr. COORAY said that the third periodic report of Tunisia (CCPR/C/52/Add.5) was a good one and had been drawn up according to the rules set forth in the Committee's general guidelines. The oral presentation that had just been made demonstrated Tunisia's firm commitment to respect for human rights and the guarantees given in the Covenant. The introduction to the written report (pp. 1-6) included a summary of the measures taken since 7 November 1987, and among them he noted that the Court of State Security had been abolished, many prisoners had been released, pluralism had been established and the life presidency had been eliminated.

31. With more particular reference to the establishment of a Constitutional Council (para. 5 (b), p. 4), he inquired whether, in addition to playing an advisory role in verifying whether draft legislation submitted to it by the President of the Republic conformed with the Constitution, it could also advise the President as to whether draft legislation conformed with the Covenant, or whether another body existed for that purpose. He asked how many members comprised the Constitutional Council and whether their independence was guaranteed by legislation, both in respect of the exercise of their functions and the security of their tenure. He also requested more information on the grounds and procedures for removal from office. Since the Constitutional Council acted only in an advisory capacity, he asked whether it was planned to establish another mechanism, independent of the legislature and the executive, which could hand down enforceable decisions on the constitutionality of a law or bill.

32. Paragraph 6 of the report indicated that the task of revising and improving the laws was entrusted to special commissions, which were already at work reforming certain codes, and that other commissions were working on the revision of the laws governing the status of judges and lawyers. On that subject he asked whether the commissions studying the status of judges and lawyers had received representations from the two professions and whether any recommendations had been made to them regarding the new status.

33. Paragraph 4 (g) of the periodic report (CCPR/C/52/Add.5) stated that the National Covenant was aimed, among other things, at preserving the foundations of national sovereignty, the republican régime, effective pluralism and the guarantee of human rights. He asked what role was played by the National Covenant in guaranteeing human rights, especially in the light of the provisions of article 2 of the International Covenant on Civil and Political Rights.

34. He was pleased to see from paragraph 20 of the report that the Tunisian legal system was developing "parallel machinery to guarantee the freedoms recognized by the [International] Covenant [on Civil and Political Rights] against any form of violation". He asked for further information about that "parallel machinery", and specifically whether a procedure similar to habeas corpus or amparo existed in Tunisia. Article 2 of the International

Covenant required States parties to adopt not only such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant but also measures aimed at eliminating any obstacle to the exercise of those rights. That included the possibility for persons who were victims of violations, such as acts of torture, to exercise a remedy which was both effective and prompt. Admittedly, as the representative of Tunisia had stated in his oral presentation, the State subject to the rule of law was one whose primary role was to protect individual rights, but such protection was better guaranteed if the State also established special recourse procedures. He asked what was the situation in Tunisia in that respect.

35. Mr. PRADO VALLEJO said that the Committee had always had an excellent working relationship with Tunisia. The changes that had taken place there were welcome and undoubtedly contributed to strengthening democracy and respect for rights and guarantees.

36. The establishment of the Constitutional Council was a particularly useful innovation for the protection of the citizen. He was interested to know what powers it had, apart from its advisory functions, and the effects of its possible decisions, particularly if it were to declare a law unconstitutional. It would also be helpful to know how its members were appointed, the length of their mandate, the conditions they were required to fulfil and their number.

37. As President of the National Human Rights Commission in Ecuador, he took a special interest in the Tunisian League for Human Rights. He asked what authority chose its members; that was an important point because the independence of a body of that kind depended on the manner in which its members were appointed. If the League was authorized to investigate allegations of human rights violations, what procedures and principles did it apply in order to do so? If it established that there had been a violation, how could the League assist victims to obtain compensation? Lastly, organizations of that kind could also do a great deal through their periodicals and other publications: had the League published the Covenant or had the Covenant been published by some other means?

38. Mr. ANDO also commended the delegation of Tunisia on its excellent written report (CCPR/C/52/Add.5), as well as its most informative oral presentation.

39. He inquired why "the development of the economy and social progress" were included among the grounds authorizing the restriction of certain rights, as set out in article 7 of the Constitution; he also asked for examples of case law on the subject.

40. Ms. CHANET said that the third periodic report of Tunisia (CCPR/C/52/Add.5) was clear, precise and self-critical and followed directly in the line of its two predecessors. She was pleased to note that the Government of Tunisia had taken the Committee's concerns into account. The document reflected the many events that had occurred since the submission of the second periodic report, which she imagined had caused some difficulty.

41. The introduction of a multi-party system was a particularly progressive measure, but it was difficult to see how such a system could be reconciled

with a constitution which had been drafted on the basis of a one-party system and which gave the President of the Republic very extensive powers. Even if the Constitution had been amended here and there, a thorough reform might perhaps be necessary.

42. Like other members of the Committee, she would like to know the extent of the Consultative Council's competence, its appeals procedure and the impact of its decisions.

43. More information was needed on the status of judges, which a commission had been given the task of modifying. She presumed that the reform would be in the direction of greater independence because, under the Constitution, it was the President himself who appointed judges on the proposal of the Higher Council of the Judiciary. That Council, however, was not governed by any constitutional provision. It was probably governed by a law, but she asked whether any amendments to the functioning of the Higher Council were contemplated.

44. In April 1986, she had followed closely what had been termed the "communiqué war" between the Tunisian League for Human Rights and the Government, with each giving its own version of certain events. She had not understood the actual position of the League in the State and asked for clarification as to whether it was a non-governmental organization with privileged status or a national advisory commission answerable to the Government.

45. Mr. FODOR welcomed the developments that had occurred in Tunisia since the submission of the second periodic report, especially the adoption of the National Covenant in 1988. Given the importance of that instrument, he inquired whether the representatives of political forces that were not officially recognized had participated in the adoption of that text. If not, were they legally or politically bound by the provisions of that Covenant?

46. Mr. WENNERGREN said that he remembered with special pleasure the fruitful dialogue which the Committee had had with the Tunisian delegation during consideration of the second periodic report and that he had listened carefully to the detailed comments made on the topic under item I (c) of the list of issues.

47. He had been interested to learn of the establishment of a Tunisian League for Human Rights and asked whether the League was consulted before the periodic reports were drafted or dispatched to the Committee. Information on the relationship between the section of Amnesty International which had just been opened in Tunis (see para. 9 of the report) with the League and the Tunisian Government would also be welcome. Had the section of Amnesty International been able to make any comments on the content of the reports submitted by the Government of Tunisia to the bodies established under the international instruments to which the latter was a party?

48. Mr. ABED (Tunisia) thanked the members of the Committee for giving his delegation the opportunity to amplify certain points which were of concern to it, especially those regarding the new bodies or legislation that were so important for his country.

49. With respect to article 2 of the Constitution, which established the primacy of international treaties over internal law, it was understandable that members should ask themselves how the principle was being applied. Co-operation with the United Nations and its various bodies was vitally important for Tunisian leaders and they had always endeavoured to respect United Nations recommendations. Obviously, a situation could arise in which a rule of international law was at variance with a provision of national legislation; the judge would then try as far as possible to apply the international rule. Cases did arise, although fortunately very seldom, where the social climate prevented such appplication. One of those rare cases was the principle of equal inheritance; its fundamental importance had not escaped Tunisia's leaders, but the mentality in the country and throughout the region to which Tunisia belonged had not changed enough to enable it to be imposed.

50. Concerning the publicity given to the Covenant, in addition to being published in the Official Journal, the Covenant and other international instruments were sometimes posted up in faculty premises. Even more important, their provisions were taught in certain institutions such as the Police Academy, where the study of those instruments formed an integral part of the curriculum. The Tunisian Government was seeking in that way to instil respect for the principles established by the Covenant into future law enforcement officials, because it was convinced that it constituted a more effective method than a posteriori supervision.

51. He had no information available on cases in which the provisions of the Covenant had been invoked. Judges were alert to the question and the Covenant was often referred to at various meetings. Whenever abuses occurred, those responsible were always arrested. The most recent such case was still pending.

52. Replying to questions regarding the independence and functioning of the Constitutional Council, he explained first of all that the Constitutional Council was of recent creation, having been established in 1987 only a few months after the Declaration of 7 November 1987. Its creation reflected a determination to establish a tradition of consultations on the constitutionality of legislation in Tunisia. Initially, the Constitutional Council had been responsible for pronouncing on whether bills were in conformity or compatible with the Constitution; it had conveyed its opinions to the President of the Republic alone, because he was the only person authorized to submit a draft bill to it.

53. The Council's mandate had subsequently been expanded and its new powers had been specified in a very recent law, dated 18 April 1990, which provided that the President of the Republic was bound to consult it before submitting any bills to the Chamber of Deputies. The President submitted to the Constitutional Council draft organic laws and draft legislation concerning procedures for general enforcement of the Constitution, nationality, the status of persons, obligations, the determination of crimes and offences as well as the applicable penalties, the existing procedures in the different courts, amnesty, the fundamental principles of the ownership system and title, teaching, public health, labour law and social security. If the Constitutional Council considered that particular provisions of a bill were unconstitutional, the President of the Republic could refer the draft to the relevant ministerial department for review and, as a rule, he did not submit that draft in its previous form to the Chamber of Deputies. Under the new law

of 18 April 1990, the President of the Republic could refer to the Constitutional Council bills other than those just described. In any event, he was bound to communicate to the Chamber the opinion given by the Constitutional Council.

54. Its new powers authorized the Council to deal with any matter concerning the organization and operation of the country's institutions submitted to it by the President of the Republic. Under the law of 18 April 1990, its membership, which included the President of the Republic, had been reduced from 11 to 9; Council members were appointed by him and consisted of ex officio members, namely, the First President of the Administrative Tribunal, the First President of the Court of Cassation, and the President of the Revenue Court - and other eminent persons selected from among such groups as lawyers and university professors. Except for the ex officio members, who retained their seats on the Council for as long as they held their office, the duration of a member's mandate was left to the discretion of the President of the Republic.

55. As to the Council's modus operandi, its work and deliberations were confidential and its members were bound to secrecy in the performance of their duties. The Council was responsible for drawing up its own rules of procedure, which were currently being drafted and would have to be approved subsequently by decree. Lastly, in reply to a question, he said that the Constitutional Council could not give a ruling on a law already in force. He added, however, that the principle whereby the Constitutional Council would have the authority to render opinions a posteriori, in other words, after a law had been passed, was being discussed but had not so far won acceptance. However, it was planned to adopt that procedure at a later stage.

56. The special commissions responsible for revising certain codes had not yet completed their work, which consisted essentially of improving the legislation and adapting it to developments in the country, changes in mentality, and any needs which arose. In reply to a query as to the possibilities of judicial remedy, he explained that, like many other countries, Tunisia was subject to two types of jurisdiction: on the one hand, ordinary law, which was governed by a number of codes, and on the other, administrative jurisdiction, which enabled appeals to be lodged against abuses of authority. The second type of jurisdiction, which had been established in 1972, was completely independent and had already built up a voluminous jurisprudence.

57. In response to a question as to how the Tunisian authorities reconciled the concept of a multi-party system with the spirit of the Constitution, he said that the Constitution had not been conceived with only a one-party system in mind, and that, in fact, it had in a way facilitated the recent enactment of the organic law authorizing pluralism of parties. The Constitution had not been the inspiration for institutionalization of a one-party system in Tunisia; related legislation had been passed for that purpose. Tunisia had a presidential system of government and therefore, the powers of the President of the Republic were obviously greater than those of a Head of State under a parliamentary system. Although the President of the Republic of Tunisia held extremely broad powers, especially under article 52 of the Constitution, there were some checks: for example, the Chamber of Deputies had complete

independence to adopt or reject a bill. A Deputy could submit a bill and if it was passed by the Chamber, the executive was compelled to ratify the law. That provision placed a curb on the President's powers.

58. He repeated that Tunisia had abolished the life presidency, since such an arrangement was no longer feasible in a system that professed to be democratic.

59. Responding to a question regarding the procedure for appointing judges, he said that they were appointed by the President of the Republic after he had taken due account of the proposals submitted to him by the Higher Council of the Judiciary. The latter was itself composed of ex officio members and members chosen by their peers, which was a guarantee of their independence. He added that Tunisian judges were extremely jealous of their independence and were not prepared to compromise on that point. They held a lofty idea not only of what could be called their independence of conscience but also independence in the performance of their duties, including administrative tasks. The fact that a judge could only be prosecuted if the Higher Council of the Judiciary waived his immunity was proof of the importance attached to that principle of independence. There was no doubt that Tunisia was more advanced than many other countries which boasted a long tradition of judicial independence.

60. Replying to a question regarding the scope of the consensus commanded by the National Covenant, he said that all the forces of the nation, especially several political movements, had responded to the appeal to safeguard the foundations of national sovereignty, the republican régime and the guarantee of human rights that the National Covenant represented. It was the embodiment of the consensus that the various political tendencies and beliefs had wanted to reach in order to promote respect for principles on which there was broad agreement in Tunisian society and, in that area, it was important to prevent a minority from imposing its will on the majority. However, there was no legal obligation to respect the National Covenant and the principle upheld was that acceptance of it should be voluntary, so that all the forces of the country could unite and contribute to the country's development in peace, dignity and respect for freedoms and the individual.

61. Lastly, with regard to the Tunisian League for Human Rights, he explained that there were two human rights leagues in Tunisia, both of them completely independent of the Government. They were private associations which did not hesitate, where necessary, to denounce the slightest aberration by the authorities.

62. Mr. FELLOUS (Tunisia) provided some additional information about the nature, operation and importance of the Tunisian League for Human Rights and its relationship with the Government, Amnesty International and other bodies. The League was a group of private individuals who had come together to protect human rights and public freedoms. Both it and its governing authorities enjoyed complete independence and its officers included eminent persons of all political persuasions. Its budget was patterned after the classic model of the budget of an association.

63. Since 1987, the League's role had expanded and it had become a more firmly established feature of the Tunisian political scene. For example,

several ministers including the present ministers of education and health had held senior positions in the League. The League was established throughout the country and had recently been consulted in a great many cases, particularly over the law on police custody and pre-trial detention; in fact, it was consulted almost as a matter of course before the enactment of any law containing provisions that might be relevant to human rights and public freedoms. It had been involved in drafting the National Covenant. It also organized numerous seminars and meetings in which Government representatives sometimes participated. The League played an important role, particularly in helping to alert the relevant ministerial departments to reported cases of human rights violations.

64. Mr. ABED (Tunisia), replying to a question concerning possible grounds for restricting human rights in Tunisia, said that the question at issue was not the restriction of human rights but rather their regulation. Human rights were inalienable and, while they could not be limited, they should be regulated, for otherwise they would remain a dead letter.

The meeting rose at 1 p.m.

UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.991
20 July 1990

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Thirty-ninth session

SUMMARY RECORD OF THE 991st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 16 July 1990, at 3 p.m.

Chairman: Mr. LALLAH

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Tunisia (continued)

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GE.90-16661/2135B

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE CONVENANT (agenda item 4) (continued)

Third periodic report of Tunisia (CCPR/C/52/Add.5) (continued)

1. The CHAIRMAN drew attention to the list of issues to be taken up in connection with the consideration of the third periodic report of Tunisia (CCPR/C/52/Add.5) and invited the Tunisian delegation to continue its replies, beginning with section II.

II. State of emergency (article 4)

Are there any legal provisions, other than article 46 of the Constitution, relating to the introduction of a state of emergency? Please comment on the conformity with the provisions of article 4 (2) of the Covenant of such legislation.

2. Mr. ABED (Tunisia) said that in addition to article 46 of the Constitution the state of emergency was governed in Tunisia by a decree dated 26 January 1978 which contained provisions designed to meet exceptional situations. It had been applied twice during the past 30 years: the first time in January 1978 and the second time in January 1984. Those exceptional measures were aimed at restoring order and safety, and the use that had been made of them had been most moderate, as had twice been reported in great detail to the United Nations. For example, the provision concerning house arrest had not been applied. There were two other decrees which applied the state of emergency to declare a curfew for a few days and to place a ban on public demonstrations in the streets. That, grosso modo, constituted the regulation of the state of emergency in Tunisia.

3. Mr. AGUILAR URBINA congratulated the Tunisian delegation on a very good third periodic report which followed the Committee's general guidelines and on Tunisia's willingness to talk to the Committee and to furnish additional documentation. Mr. Abed had largely dispelled his doubts on the state of emergency; however, he noted that nothing was said in article 46 of the Tunisian Constitution about the maximum duration of the state of emergency; the article simply said that the measures ceased to be valid after the ending of the circumstances which gave rise to them. Furthermore, noting that the article stated that the President of the Republic had to address a message to the National Assembly on that subject, he asked whether the National Assembly could exercise effective control measures to bring the state of emergency to an end if it considered that circumstances justified it.

4. Mr. ABED (Tunisia), replying to Mr. Aguilar Urbina, said that the duration of the state of emergency was laid down in article 2 of the decree of 26 January 1978, where it was set at a maximum of 30 days. As to Mr. Aguilar's second question, he stated that in practice there had been the most moderate possible application of the decree in 1978 and 1984 and that even if the authorities did not adopt another text to terminate that state of emergency it ended automatically after 30 days.

5. Mrs. HIGGINS welcomed the submission to the Secretariat by Tunisia dated 6 February 1984 in which Tunisia had confirmed the end of a state of emergency. That statement had listed the permitted measures relating to the state of emergency and said they might be enforced at the discretion of the administrative authorities. She asked whether that discretion would allow derogations other than those listed. The answer seemed to be that it would, since the text said that the measures might be enforced at the discretion of the administrative authorities notwithstanding the existence of the provisions of the decree. She also asked how the administrative authorities, when exercising their discretion, were reminded that they might do so only when there was a threat to the life of the nation, as provided under article 4 of the Covenant. There might be a possibility of judicial review, but in matters of emergency an instruction was preferable at the outset that the decree could not be applied except in those circumstances.

6. The CHAIRMAN, speaking as a member of the Committee, noted that the Covenant applied in Tunisia as a matter of law and that there was a measure of legislative control over the state of emergency. However, in the event that the measures taken did not comply with article 4 (1) of the Covenant, was there some form of judicial control and, if so, what kind?

7. Mr. ABED (Tunisia) recalled that in practice the decree of January 1978 had been applied twice and that the legislative and executive authorities had taken care that nothing was done beyond what was expressly stated in it. As far as the provisions were concerned, they could obviously be interpreted in different ways, but there was a special authority in the form of an administrative tribunal which was competent to deal with all administrative decisions and abuses and which pronounced on applications for stay of action the same day or the next day. Notwithstanding the state of emergency, there was no reduction in the powers of that body to oversee the decisions of the administration in all circumstances.

III. Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26)

(a) Please provide information regarding current plans to remove from Tunisian legislation remaining inequalities, such as those relating to inheritance, the granting of nationality by virtue of filiation, discrimination against the female spouse under article 207 of the Penal Code and the husband's prerogatives as head of the family.

(b) Please provide examples of activities undertaken to enhance the role and status of women during the reporting period, particularly by the National Union of Tunisian Women.

8. Mr. AMAMOU (Tunisia), replying to question (a), noted that immediately after Tunisian independence the Tunisian legislature had initiated a gradual process of implementing the principle of the equality of sexes. The evolution of the status of women had to avoid any false step that risked breaking the family equilibrium based on ancestral rules and traditions. That had not prevented the legislature from taking risks and going faster than the evolution of attitudes. Less than five months after independence certain excessively unjust rules had been eliminated: polygamy and divorce by repudiation had been abrogated by the Code of Personal Status, promulgated on 13 August 1956.

9. Later, other legislative measures had been taken, as mentioned under article 3 in the report: equality in guardianship of children, the granting of custody of the child to the mother in case of the father's death and, the award of a pension to a spouse who had suffered moral or material injury. Concerning existing inequalities, the social and cultural environment of the moment did not lend itself to changing the laws governing inheritance. With regard to nationality, the wife or mother could transmit her nationality to her husband or child under certain conditions. A foreign child could obtain nationality on the basis of a simple declaration made during the year before attaining majority. The difference between the sexes as far as the nationality laws were concerned was minimal.

10. With respect to article 207 of the Penal Code, which attenuated the punishment of the husband guilty of killing his wife caught in the act of committing adultery, that article dated from 1913, when polygamy had been widely practised in Tunisian society. It had not been easy to conceive of the adultery of the husband, since he was allowed to have four wives. Only the wife's adultery was thus taken into account and article 207 had to be considered in that former historical context. Under the Code of Personal Status there had been an evolution towards greater equality: for example, in 1966 article 236 of the Penal Code, which permitted legal action only by the husband against an adulterous wife, had been modified to make adultery a crime, whichever partner committed it. Article 207 was thus an old provision dating from before the reforms under the Code of Personal Status and had perhaps escaped the vigilance of lawmakers because it had been considered of no great importance. It would surely be revised in the direction of equality as far as the commutation of sentence for the murder of a spouse caught in adultery was concerned, since the Penal Code was currently being studied with a view to its revision.

11. Regarding the final point on the prerogatives of the husband as head of the family, he recalled that the rights and duties of the spouse as provided by the Code of Personal Status currently corresponded to the functions actually carried out in the household by the man and the woman.

12. Mr. ABED (Tunisia), replying to question (b), said that there were currently two women's associations in Tunisia, the National Association of Women and the Association of Democratic Women, whereas previously there had been only one. As a result of the municipal elections of 10 June 1990, women were represented on municipal councils in a not inconsiderable proportion of 14 per cent. In the legislative elections of 2 April 1989 six women had been elected as members of Parliament. The Vice-Chairmanship of the National Assembly was also held by a woman. The place of women in Tunisian public life was appreciable; there was a woman in the Government and there were women ambassadors: a living example was present. The answer to question (b) thus lay more in the results achieved than in the activities undertaken. However, the question concerning activities in the previous three years to enhance the status of women had to be understood in the social, political and regional context. He confirmed the determination of the Tunisian authorities to go forward; the adoption of the Code of Personal Status itself constituted an answer to the question, above all in a regional environment that had seen the birth of certain extremist political groups which increasingly claimed a monopoly of Islamic truths and related social and economic practices. The criticism of modern orientations by those groups was accompanied by programmes

aimed at a social reorganization that would not leave much room for women in public or private affairs. That was why the two Tunisian women's associations had the support of the public authorities in achieving concrete results.

13. Mr. ANDO said that the Tunisian report itself recognized inequalities in law between men and women and that he was sure more such inequalities remained in fact; however, Tunisia was certainly trying to overcome them. He noted that article 21 of the Tunisian Constitution provided that all electors born of a Tunisian father and at least 28 years of age could stand for election to the National Assembly. In that regard, he asked what was the situation of an elector born of a Tunisian mother.

14. Mr. FODOR, referring to paragraph 38 of the report, observed that the Civil Servants' General Status Act made provision for female civil servants to take maternity leave. He inquired what provisions there were for maternity leave in other employment sectors and whether there was any plan to secure equal treatment for all working mothers. He also asked in what fields discrimination against women still existed in practice, in spite of legal provisions to the contrary. In particular, he inquired whether the Education Act mentioned in paragraph 36 should be construed as covering university education for women.

15. Mr. MYULLERSON congratulated the Tunisian delegation on a very comprehensive report which showed a serious approach to the protection of human rights. He asked how the provision of article 23 of the Code of Personal Status, quoted in paragraph 34 (a), about the wife respecting her husband's prerogatives as head of the family should be interpreted. What, in practice, were those prerogatives? With regard to paragraph 142, he asked whether the filiation of a child was established only through the husband or whether it could also be established through the wife or through an unmarried mother. He had noted the arrangements described in paragraphs 108 and 109 for guardianship. In the case of a feeble-minded child, was it possible for the mother to act as a guardian, if the husband was dead or had disappeared?

16. The CHAIRMAN, speaking as a member of the Committee, said he would like to receive clarification about the laws of succession. The Covenant had been law in Tunisia since its ratification. In practice, however, how did magistrates take decisions in matters of succession in view of the conflict between article 3 in conjunction with articles 23 (4) and 26 of the Covenant and Tunisian legislation, which awarded two thirds of the inheritance to the son? Had there been any cases of women claiming equal inheritance rights?

17. Mr. ABED (Tunisia) said that inequality between the sexes still existed, but steady progress was being made towards more equitable legislation. For example, a few years previously the obligation had been laid on judges in divorce cases to give priority to the wife in respect of the family home. Since it was the ambition of all Tunisians to own a house of their own, that provision had at first caused dismay among potential husbands but that reaction had soon passed in a changing society. Since then the family home had frequently been awarded to the woman even when she had been the guilty party in a divorce.

18. With regard to Mr. Ando's question about the right to stand for elective office, there was no difficulty in that respect for persons born of Tunisian mothers, as well as of Tunisian fathers. In response to Mr. Fodor's question,

the civil service led the way in its treatment of female employees, but the Tunisian Labour Code would follow in due course. In respect of education, there was no discrimination between boys and girls, as was shown by the fact that girls constituted some 44 per cent of the school population. With regard to the questions put by Mr. Myullerson, the provision he had quoted from the Code of Personal Status did not have much meaning in practice. With the abolition of the right of the husband to repudiate his wife, Tunisian legislation had imposed equality in marriage. With regard to the position of unmarried mothers, the child would not be legitimate but the mother would have custody of the child concerned, as also generally in the case of divorce. With regard to the Chairman's question about succession rights, he said that, in reality, Tunisian families generally had a strong sense of unity and that the prospects of girls were not usually prejudiced. It was an area in which it was impossible to force the pace and overturn principles 14 centuries old.

IV. Right to life (article 6)

Is any revision of the Penal Code, with a view to curtailing the number of offences currently punishable by the death penalty, being contemplated?

19. Mr. ABED (Tunisia) said that a special review commission on criminal legislation had proposed that the number of offences punishable by the death penalty should be reduced. He recalled that, since 1987, no death sentences had been carried out; they had all been commuted to life imprisonment.

20. Mr. POCAR noted that there had been a substantial development in Tunisian legislation in a short period. He was pleased to hear that the list of capital offences was to be reduced, since it was currently very long, particularly in view of article 6 (2) of the Covenant which stipulated that sentence of death might be imposed only for the most serious crimes. Noting that the Tunisian representative had stated that the President of Tunisia was opposed to the death penalty, he asked whether that reflected widespread feeling in the country and what the difficulties were which prevented the introduction of a bill to abolish the penalty. It was true that no executions had taken place since the end of 1987, but as long as the death penalty remained on the statute book, it might always be implemented, if there was a change of President.

21. Mr. AGUILAR URBINA said that the number of death sentences handed down might increase if certain extremist trends became more marked. He had noted that, according to paragraph 51 (d), the Penal Code provided for the application of the death penalty to crimes of rape perpetrated even without the use of violence. He wondered whether Tunisian law considered that there could be cases of rape which did not involve the use of violence.

22. Mr. ABED (Tunisia) agreed that the list of capital crimes was long and that it should be shortened as a first step. There was fairly widespread support in Tunisia for the abolition of the death penalty but it received a set-back when particularly atrocious crimes, which were not numerous, were given great publicity. For example, there had recently been a case of a man who had raped and murdered no less than 14 minors between the ages of 12 and 17. However, the perpetrator of those crimes had not been executed: his sentence, like all the others, had been commuted by the President. There were indications that capital punishment would not last much longer, but it was

necessary to proceed gradually. He agreed that rape always involved violence, either physical or moral. It was for the judge to evaluate the particular circumstances of cases, pending revision of the Penal Code.

23. Mrs. HIGGINS asked whether it was correct that in the case which the Tunisian representative just mentioned, the court had not received medical evidence on the psychiatric state of the accused.

24. Mr. WENNERGREN asked whether the fact that the President refused to sign the order for execution meant that the death sentence was automatically commuted or whether the condemned man was left in suspense.

25. Mr. ABED (Tunisia), replying to Mrs. Higgins, said that the accused man had been subjected to extensive psychiatric investigation and the conclusion had been reached that he was responsible for his acts. Full details were contained in the case file. Replying to Mr. Wennergren, he said that the death sentence was automatically commuted to life imprisonment if the President did not sign the death warrant. The exact length of the sentence which would actually be served would depend on factors such as the conduct of the prisoner.

V. Liberty and security of the person and the treatment of prisoners and other detainees (articles 7, 8, 9 and 10)

(a) Have there been any allegations of torture and similar offences during the reporting period? If so, were appropriate investigations made and offenders brought to trial?

(b) What measures for fighting unemployment and preventing delinquency are being contemplated by the Tunisian authorities other than compulsory civil labour? Please provide information regarding plans, if any, to repeal Act No. 7822 of 8 March 1978.

(c) What proportion of persons accused of offences or crimes are held in pre-trial detention and what percentage of the latter are detained for a period as long as 18 months? (See paragraph 72 of the report.)

(d) Please provide information on detention in institutions other than prisons and for reasons other than crimes (e.g., in psychiatric institutions).

26. Mr. FELLOUS (Tunisia) said, in answer to question (a), that subsequent to the changes after 7 November 1987, it had been a priority of the authorities to implement effectively both the Convention against Torture, to which Tunisia was a party, and relevant domestic legislation. The Government was making every effort to make the various relevant services aware of their responsibilities in regard to human rights and to establish administrative structures to detect and investigate cases of abuse of power. During the period between Tunisia's second and third periodic report, there had been 20 cases of allegations of torture, two thirds of which had been found justified. Those responsible had been sentenced to terms of imprisonment and automatically suspended from their posts. Since May 1990 the Tunisian League for Human Rights had brought to the attention of the authorities three cases of violent deaths in penal establishments. Ad hoc investigations supported by medical evidence had shown that they were cases of suicide. During the period

between the two periodic reports, 129 cases of abuse of power in the widest sense by public officials had been brought before the courts and to date nine sentences of imprisonment had been imposed. The remaining cases were still sub judice.

27. Mr. ABED (Tunisia), replying to question (b), pointed out that the 1978 Act introducing civilian labour had been designed to benefit young people who were not following courses of study and had no employment. They were employed in various kinds of public works, received vocational training as well as a general education, and were paid the equivalent of the guaranteed minimum wage. The Act thus had a limited field of application in that it was designed to meet the employment needs of particular categories of young people.

28. A wide range of other measures had been taken by the Tunisian Government as part of its efforts to combat unemployment and delinquency. They included the encouragement of investment by means of tax concessions, the lifting of import restrictions on capital goods, a programme of training courses for young people, assistance grants for small and medium-sized businesses, and the introduction of public works schemes to employ the unskilled. Steps had recently been taken to provide additional funds for the National Office for Employment and Vocational Training to enable it to provide a better service to both employers and workers, notably by organizing improved training courses and apprenticeship schemes. Those measures had proved very effective in reducing unemployment. The day might eventually come when the system of civilian labour introduced under the 1978 Act would no longer be needed.

29. Mr. FELLOUS (Tunisia), in reply to question (c), said it was true that a six-month period which could in some cases be extended to 18 months under the Code of Penal Procedure was perhaps over-long. However, since the judicial process in Tunisia tended to be very slow, it was not unusual for a lengthy period to elapse before a case came to trial. His Government was endeavouring to solve the problem by setting up a new institute for the training of magistrates, and by creating more courts. He hoped that the special commission set up to study the subject would soon take a decision on the reduction of the period of pre-trial detention.

30. In reply to question (d), Tunisia considered that the term "detention" was only appropriate in the case of persons detained as a result of a court sentence. Internment on any other grounds was not regarded as detention.

31. Where psychiatric institutions were concerned, an Act of 9 April 1953 provided that any citizen who was mentally ill and who represented a threat to public order or public safety could be interned in a psychiatric hospital, but only following an order issued by the Minister of Public Health, which had immediately to be communicated to the Minister of Justice. An appeal against such internment could be made by the person concerned, his spouse, or a relative to a joint medical and legal committee presided over by a magistrate and including two doctors. He was glad to be able to tell the Committee that the Tunisian Government had recently introduced a draft Mental Health Act, under which only hospitals and health institutions would be authorized to intern persons suffering from mental disorders. The Act provided that no one could be detained in hospital without his consent or the consent of his legal guardian, except in cases of mental disorders making consent impossible or in cases requiring constant care and supervision in a hospital environment.

Within eight days of the internment, the Ministry of Health was required to notify the State Attorney's Office of the name of the patient as well as the name of the person making the application for internment. In cases of imminent danger to public order, the police were authorized to take the decision to have an individual detained in a psychiatric hospital, but any such decision had to be confirmed within 48 hours by an order from the Minister of Public Health.

32. Mr. FODOR asked whether failure to provide medicines for detainees who were in need of them was considered by Tunisian jurisprudence as constituting ill-treatment, and whether the persons responsible for such ill-treatment were brought to trial. He noted that under a provision of Act No. 87-70 of 1987, persons held in police custody or pre-trial detention were entitled to have recorded any acts of violence committed against them, and that provision was to be commended. However, he would like to know what procedure was followed in regard to allegations of torture or ill-treatment by police officers, since the mere recording of such allegations would obviously be insufficient, particularly if the records were drawn up by the police officers themselves.

33. The abolition of forced labour sui generis as a penalty by Act No. 89-23 of 1989 was to be welcomed, since it brought Tunisia's Penal Code more into line with article 8 of the Covenant. However, several paragraphs in the report, including paragraph 47, referred to hard labour as a penalty, which appeared to be in contradiction with the new Act. Did the Act automatically amend the relevant provisions of the Penal Code, or would a further Act need to be passed for the purpose?

34. Lastly, he asked what legal provisions, if any, were applicable to detention without trial, and how far the actual practice followed was consistent with such legal provisions.

35. Ms. CHANET said the Tunisian League for Human Rights and Amnesty International had reported that there were currently some 20 cases of ill-treatment on police premises needing further clarification, and that of those 20 cases, there had been three resulting in deaths in detention. The Tunisian delegation had informed the Committee that the persons concerned had committed suicide. She would appreciate further details on those three cases, and, on the assumption that complaints had been made, whether those responsible had been tried and found guilty, and whether the victims had been compensated.

36. Her next question related to the duration of detention in custody, which was provided for under article 13 bis of the Penal Code. On what grounds could that period be extended, and were there certain offences for which it could be prolonged beyond the normal period of extension? How far was the judge or examining magistrate empowered to decide on the duration of periods of detention, and were detainees able to communicate with the outside world?

37. The Tunisian representative had stated that civilian labour, which was compulsory, was chiefly intended to combat unemployment. Such a measure would appear to contravene article 8 of the Covenant, under which the economic or social benefits of compulsory labour did not constitute a valid justification for its use. The Tunisian representative had not made clear whether or not his Government intended eventually to repeal the 1978 Civilian Labour Act.

38. Mr. POCAR said he was pleased to hear of the willingness of the Tunisian authorities to investigate any cases of ill-treatment of detainees, cases which unfortunately occurred in many countries despite the laws in force. Nevertheless, he had the impression from reports received from various sources that although following the reforms of 1987 the number of allegations of ill-treatment had fallen significantly, they had recently begun to rise again. Of course, it was for the delegation to confirm or deny such allegations, but if they should prove true, he wondered whether investigations alone would be sufficient to solve the problem. There were evidently other reasons for the increase in such cases, possibly connected with the implementation of the new article 13 bis of the Penal Code.

39. He had been pleased to note that the 1987 Act limited detention in custody and preventive detention to four days, extendable to a maximum of 10 days. However, it had been reported that in practice it was routine for the maximum period to be served. He wondered whether ill-treatment of detainees might occur as a result of the provision under article 13 bis of the Penal Code whereby magistrates were entitled to delegate the interrogation of suspects to police officers. If interrogations were under the control of the police rather than of the magistrate, there was obviously a greater likelihood that abuses might occur.

40. Mr. WENNERGREN said he had not yet received an answer to his question under section I of the list of issues as to whether there were any channels of communication between Amnesty International and the Tunisian League for Human Rights. However, it would appear that such communication did exist, since Amnesty International had reported that the League had recently drawn attention to 23 alleged cases of torture and suspicious deaths in custody, and had called for a Government inquiry. Those allegations had been rejected by the Tunisian Minister of the Interior, apparently without an investigation.

41. Amnesty International had also expressed concern at the widespread use of torture in Tunisia. He himself had been shocked to see it alleged that such methods of torture as the "poulet rôti" and "falaga" were still being used, despite assurances by the President and the Government that they had been discontinued. It had even been suggested that torture had taken place at the headquarters of the Ministry of the Interior, which would of course encourage the police in the belief that they had a free hand to continue as before. He would like to know what practical steps the authorities were taking to bring an end to such practices. It was easier to pass legislation, and to accede to conventions, than to take effective steps to ensure that the use of torture was ended once and for all.

42. Where the duration of detention in custody was concerned, he would like to know whether detainees were entitled to apply for the assistance of a lawyer or to communicate with their families, since no provision to that effect was made under article 13 bis. Was it intended to make any amendment to the Code of Penal Procedure in that connection?

43. He would also like to know the duration of detention that was authorized in cases where public order was endangered, for example in the case of street disturbances involving young people.

44. On the matter of internment in psychiatric hospitals, the Tunisian delegation had stated that Tunisia did not choose to regard such internment as detention in the strict sense of the word. Whether or not the term "detention" was used, the person concerned had in effect been deprived of his liberty, and should thus, according to article 9 (4) of the Covenant, be entitled to take court proceedings. As he understood it, such a person would have no opportunity for a judicial review of his case, which would be decided on by the Minister of Health and the Minister of Justice. That did not seem to be compatible with article 9 (4) of the Covenant.

45. Lastly, was there any legislation governing other forms of detention, for example the detention of drug addicts, vagrants, or persons with infectious diseases?

46. Mr. MYULLERSON asked for further details on the different types of offence on the basis of which detainees were assigned to the three types of prison listed in paragraph 77 of the report.

47. Mr. EL-SHAFEI said the questions that had been raised were pressing ones that gave grounds for great concern. A number of them, notably the duration of pre-trial detention and the alleged use of torture, had constantly recurred, and had not received a satisfactory reply. He hoped that the Tunisian delegation could throw more light on those questions, since they clearly affected the immage of Tunisian law and the way in which it was being implemented.

48. Mr. ABED (Tunisia) observed that it was not uncommon, when sensitive issues were involved, for material contained in a country's report to be taken up and amplified in certain circles, sometimes for political ends and sometimes in good faith, on the basis of information drawn from what were sometimes surprising sources. For its part, the Tunisian delegation would do its best to stick to the facts.

49. He submitted that, as his delegation had promised before the Committee in 1987, notable improvements had indeed been made in establishing procedures with regard to custody and pre-trial detention, even if there was still room for improvement. The period of custody was now fixed by law at four days, renewable once, with the possibility - as an exception - of a further two days; under no circumstances could it legally exceed 10 days, a period that was considered to be reasonable given the various practical difficulties involved in making it shorter. Rare occasions when the period had been longer were thoroughly investigated.

50. Concerning ill-treatment while in custody, as his country's representatives had declared before the Committee against Torture, every possible step was taken to prevent such occurrences; he could produce a great many printed instructions and administrative circulars which, in their great concern for propriety, even went so far as to warn public officials against the use of bad language when addressing detainees.

51. Mr. FELLOUS (Tunisia), after endorsing the statement by Mr. Abed concerning Tunisia's attitude towards torture and all other forms of violence, confirmed that only 19 days after the great changes of 7 November 1987, action had been taken to amend the country's legislation regarding custody and

pre-trial detention, with the incorporation of a regulatory mechanism in the Code of Penal Procedure. Moreover, as was stated in the report before the Committee, a number of commissions were actively engaged in seeking the greatest possible harmonization of all Tunisia's codes with the provisions of the International Covenant on Civil and Political Rights. The duration of pre-trial detention, which was determined in part by a lack of judicial police officers competent to conduct inquiries, remained a subject of concern; sanctions had indeed been imposed when the absolute maximum of 10 days permitted by the law had been overstepped. Another matter under review was the practical possibility for persons detained to contact their families, together with the question of access to them by lawyers; efforts were being made to eliminate shortcomings in that respect. At the same time, the law of 26 November 1987 on custody and pre-trial detention actively favoured human rights in a number of ways, for example, by allowing detained suspects or a member of their family to call for a medical examination during, or at the end of the period of custody; such requests were duly recorded in the papers relevant to the case, and any refusal had to be the subject of a written statement to which the detainee must add his or her signature of acceptance; those provisions obviously discouraged ill-treatment while in detention, the duration of which also had to be formally and exactly recorded in a register maintained for that purpose.

52. Concerning the cases of torture and ill-treatment listed by the Tunisian League for Human Rights and alluded to by Ms. Chanet, and more specifically the three cases of violent death reported to have occurred while the persons were in police custody, he produced documentation supporting the verdict of suicide, adding that the time had perhaps come in Tunisia to do away with what had become a systematic tendency to suspect torture whenever violence manifested itself.

53. With regard to Mr. Pocar's warning about the dangers inherent in the multiplication of commissions rogatoires, he acknowledged that the approach adopted by judicial police officers assigned to a case might be somewhat tougher than that of an examining magistrate, but suggested that the practice of delegating authority to cross-examine was widespread in countries whenever it proved impossible for the magistrates to carry out an inquiry themselves. In Tunisia, unfortunately, the limited number of examining magistrates made that practice unavoidable for the present, but it was hoped to expand the magistrature substantially in the not too distant future, thanks to the creation of an appropriate law school.

54. Replying to Mr. Wennergren, he said that he was not in a position to provide details of interaction between Amnesty International and the Tunisian League for Human Rights in calling the attention of the Ministry of the Interior to abuses of human rights; he would assume, however, that by virtue of their respective concerns, the two bodies complemented one another. At all events the League was certainly active in alerting the Ministry to alleged cases of torture or other forms of physical or psychological ill-treatment; all were fully investigated, and appropriate penalties, including imprisonment, were imposed. He would transmit details of names and cases to the Secretariat.

55. Mr. Wennergren had also asked whether detention took place in Tunisia for reasons other than crimes or psychiatric problems. He would first reply that in the country's legal terminology, "detention" referred solely to the deprivation of liberty, in connection with judicial affairs, by the holding of persons in police stations or premises of the national guard (gendarmerie). Psychiatric internment was subject to strict ministerial controls and guarantees dating from the 1950s, and could be appealed against. A law of 1972 provided for immediate release on grounds of misuse of administrative authority. There were no other grounds for detention; all instances of custody and pre-trial detention were - as had already been stated - fully registered and their legality was subject to verification.

56. In answer to Mr. Myullerson, he said that, according to Tunisian legislation, an offence was any act that incurred a penalty ranging from 16 days' to 5 years' imprisonment, while a crime was any act incurring penalties of longer duration.

VI. Right to a fair trial (article 14)

(a) In the light of the executive branch's discretionary powers in respect of the appointment, assignment and tenure of judges, how is the independence and impartiality of the judiciary guaranteed?

(b) Is there any free legal aid and advisory scheme and, if so, how does it operate?

57. Mr. ABED (Tunisia), responding to question (a), said he believed that he had already replied in part earlier in the meeting. He would merely add that the Higher Council of the Judiciary, which was composed of ex officio and elected members, must endorse all proposals in respect of the appointment of all judges, whose independence and impartiality were fully guaranteed by constitutional and other provisions; members of the judiciary in fact enjoyed protection which resembled parliamentary immunity and which could only be suspended by the Higher Council.

58. Concerning question (b), he said that legal aid was available in accordance with a decree of 1956 which provided for the assignment of lawyers to defend the interests of demonstrably needy persons; free legal consultations were, on the other hand, not currently available in Tunisia, due to existing pressures of their regular duties on the time of members of the legal profession.

59. Mr. DIMITRIJEVIC said he was glad to welcome, once again, the Tunisian delegation, under the same leader as when the second periodic report had been examined. Certain questions had been posed on that occasion, relating to Tunisian military courts, which had been described at the time as being in no sense special bodies, and as having competence rationae personae only in cases involving members of the armed forces. He asked whether it was true that, according to information he had since received, if a group of defendants in a single case contained as few as one member of the armed forces, all were tried by the military court. Was it also true that decisions of the military court could still be reviewed by the Court of Cassation? Lastly, was there any discernible tendency in Tunisia to reduce the competence of military courts,

or even to abolish them in time of peace, as was observed in other countries throughout the world and as, it seemed, the Human Rights Committee would wish? He welcomed the information given at the beginning of the third periodic report concerning the abolition of the Court of State Security.

60. Mr. MYULLERSON, noting from paragraph 103 of the report that appeal to a higher instance was not always possible in the case of sentences for criminal offences, asked whether there was a tendency to eliminate such exceptions, which appeared to be in contradiction with the provisions of article 14 (5) of the Covenant.

61. He observed from paragraph 125 of the report that articles 44 and 48 of the Tunisian Press Code provided for imprisonment and fines. It was his understanding that crime and punishment usually and more properly came within the purview of a country's Criminal Code, rather than of other legal instruments. Could some explanation be provided?

62. Mr. ABED (Tunisia) informed Mr. Dimitrijevic that military courts in Tunisia were long-established institutions, duly constituted and of a non-exceptional nature, functioning in accordance with the normal rules of law. It was true that they dealt with the totality of any case involving military personnel, and that included passing judgement with regard to any non-military co-defendants. Rationae personae and rationae materiae rules of competence applied to them. There were no derogations from the provisions of civil law; still less had the military courts instituted special crimes. Up to the present, it had not been deemed necessary to dismantle what - despite the perhaps intimidating adjective "military" - essentially amounted to a straightforward organizational structure that was, furthermore, presided over by civilian judges; the question would, however, be kept under review.

63. Replying to Mr. Myullerson, he submitted that, subject to certain exceptions in the domain of administrative law, Tunisian legislation offered all the guarantees found in that of other countries, including the automatic reduction of sentences under certain conditions and the right of appeal.

64. On the question concerning the Press Code, he said he saw no reason why a body of law governing the use of the press, or, for that matter, any other body of specific law, should not provide for sanctions in case of transgression; the Penal Code did not necessarily cover all eventualities. Indeed, if the possibility of sanctions did not form part of a code, how could respect for the code itself be ensured?

The meeting rose at 6.05 p.m.

UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.992
8 October 1990

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Thirty-ninth session

SUMMARY RECORD OF THE 992nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 17 July 1990, at 10 a.m.

Chairman: Mr. LALLAH

later: Mr. DIMITRIJEVIC

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GE.90-16670/2458B

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Tunisia (CCPR/C/52/Add.5; M/CCPR/22) (continued)

1. The CHAIRMAN invited the representative of Tunisia to reply to the questions contained in section VII of the list of issues to be dealt with in connection with the consideration of his country's report (M/CCPR/22). That section read:

"VII. Freedom of movement and explusion of aliens (articles 12 and 13)

(a) How often has the issuance, renewal or extension of a passport been restricted during the reporting period, pursuant to Act No. 75-40 of 14 May 1975? (See paragraph 88 of the report.)

(b) Please clarify whether, in and of itself, the lodging of an appeal against an expulsion order issued by the Minister of the Interior has suspensive effect?"

2. Mr. FELLOUS (Tunisia) said that, since passports were issued by the local authorities (police and gendarmerie stations), his delegation was not able at the moment to provide the Committee with statistics on cases of refusal to issue, renew or extend a passport. However, both Act No. 75-40 of 14 May 1975 and practice showed that Tunisia was one of the countries in the world that most easily issued and renewed passports. The average time it took to obtain a passport was one week and, in emergencies, it could be only 24 hours; a passport was issued upon presentation of an identity card, four photographs and a duly-filled form, subject to payment of a stamp duty that was equivalent to 30 or so Swiss francs. A passport was valid for five years and every Tunisian national had a right to be issued a passport and to have it renewed or extended. Cases where limitations were authorized were defined very restrictively by the 1975 Act. Those limitations were applicable either at the request of the Office of the Attorney-General or in cases where the person in question was the subject of legal proceedings or was wanted for a crime or offence or to serve a prison term.

3. A further restriction involved the concepts of public order, security and injury to the good reputation of Tunisia abroad. In addition, Tunisian law provided for compulsory withdrawal of a passport if it had been obtained irregularly, if the holder was in possession of another valid national passport or if unlawful changes or additions had been made in it. He noted that freedom of movement was a right protected by article 10 of the Constitution and that, apart from the above-mentioned cases of restriction, there were no other known cases of refusal to issue a passport in Tunisia. The concepts of public order and security were understood in the very narrow sense and it was on the basis of those principles that the Tunisian authorities were combating the major international problems of the drug traffic, the abduction of individuals for the purposes of prostitution, serious crime and terrorism. Currently, the only cases of restriction - in connection with which the Tunisian League for Human Rights (LTDH) and other

associations had intervened - concerned individuals wanted abroad for offences of that kind. In any event, it should be pointed out that article 44 of the Act of 1 June 1972 relating to the organization of the Administrative Tribunal enabled any person incurring a limitation which he regarded as unlawful or as involving abuse of power by the administration to file an appeal on the grounds of abuse of authority.

4. In reply to the question contained in section VII (b) of the list, he indicated that the status of aliens in Tunisia was governed by Act No. 68-7 of 8 March 1968, which defined what was meant by "aliens" and the conditions for temporary stay and residence. Tunisian legislation in that regard was fully in keeping with the provisions of article 13 of the Covenant. Article 18 of the 1968 Act provided that only the Minister of the Interior could take the decision - to be set forth in a detailed judgement - to expel an alien whose presence in Tunisian territory was an immediate threat to public order. In addition, the authorities could grant a sort of stay of execution of the decision for humanitarian or material reasons. An expulsion order by the Minister of the Interior was an administrative decision and could therefore be appealed. Article 44 of the Act of 1 June 1972 also provided that the implementation of the decision could be suspended whenever the decision entailed the risk of undesirable and irremediable consequences for the person expelled. Tunisia was proud that it had had no cases of expulsion for three years.

5. Mr. DIMITRIJEVIC said he would simply like to confirm the meaning of some of the terms terms used by the representative of Tunisia. For example, he was not sure exactly what was covered by the word "expulsion". It was his understanding from the report that, in cases where an alien who was the subject of an expulsion order found that he was unable to leave Tunisia, the Minister of the Interior placed him under a restricted residence order until such time as he could leave the country. He would be grateful if the Tunisian delegation could provide some clarifications in that regard and explain exactly what was meant by the explusion of aliens under Tunisian law.

6. The representative of Tunisia had indicated that only the Minister of the Interior could issue an expulsion order. In a number of countries where the law contained similar provisions, however, the Minister often delegated his authority in that area to officials of a much lower rank. He would like to know whether that was the case in Tunisia. Could the Minister of the Interior delegate his authority, and had that ever happened?

7. Ms. CHANET said she would like to know how many cases of refusal to issue and of withdrawal and confiscation of a passport there had been. Referring to information supplied in the context of what had been called the "press release war", she asked about the status of the cases looked into by the LTDH and how they had been settled.

8. One of the grounds for the restriction of the issuance or renewal of a passport provided for by Act No. 75-40 of 14 May 1975 was the possibility that an individual might harm the good reputation of Tunisia. She was not sure what was meant by such a curious expression: what was a country's good reputation and how could an individual threaten it? The concept of reputation

was basically a very subjective one. She would like to know the criteria on which the Government based itself in deciding that the country's good reputation had been injured.

9. Mrs. HIGGINS, continuing Ms. Chanet's line of questioning, asked whether the Tunisian authorities considered such a provision to be compatible with article 12, paragraph 3, of the Covenant, which did not refer to the need to protect the good reputation of the country as a ground for restriction. In introducing Tunisia's report and in order to give an illustration of the effectiveness of the LTDH, Mr. Abed had indicated that most of the 196 persons who had had their passports withdrawn had ultimately had their rights restored. That was obviously good news, but she would like to know why those passports had been withdrawn and whether the ground for withdrawal had been the good reputation of the country.

10. Mr. MYULLERSON associated himself with Ms. Chanet's and Mrs. Higgins's questions. He would also like some clarifications on the right of Tunisian citizens to leave their country. Article 12 of the Covenant provided for a number of restrictions with regard to that right, such as the need to protect national security, public order, etc. It was not unusual to find those exact expressions in national legislation, but, in most cases, States set forth the restrictions in question more precisely. He would like to know the situation with regard to Tunisian legislation and which restrictions it provided for explicitly. In particular, was the limitation linked to injury to the country's good reputation stated explicitly in Tunisia's national legislation?

11. Mr. FELLOUS (Tunisia), replying to Mr. Dimitrijevic's question, whether an expelled alien was subjected to a restricted residence order until he had left the territory, said that the reply was contained in article 19 of Act No. 68-7 of 8 March 1968 relating to the status of aliens in Tunisia. That article provided that, in cases where an alien under an expulsion order was unable to leave Tunisia, the Minister of the Interior decided on the place where the person was to reside until such time as he was able to leave the country. That meant that, if that person had a fixed and known domicile in Tunisia, he or she must live there and report regularly to the local authorities (police or National Guard station). The sole purpose of that provision was to enable the authorities to remain in contact with the person in question before he left the territory permanently. It should be pointed out that, in such cases, the alien was still subject to the explusion order and was granted a stay of execution for a limited time only and for humanitarian or material reasons. With regard to Mr. Dimitrijevic's second question, he said that only the Minister of the Interior was empowered to issue an explusion order; the Minister took his decision on the basis of a detailed report which was attached to the draft explusion order and submitted by the head of the aliens and borders service. There was thus no possible delegation of authority in that regard. The situation was different in cases where an alien was turned back at the border: the person was not in Tunisian territory, but wished to enter. If he did not meet the requirements, the border guards were empowered to send him back, but that was not an expulsion within the meaning of article 13 of the Covenant.

12. Replying to Ms. Chanet's questions, he explained that the expression "press release war" had been used by certain newspapers to designate an exchange of press releases between the Tunisian Government and the LTDH concerning three cases: certain restrictions on the issuance of passports and cases of withdrawal of passports; cases of death by violence occurring inside a police station; and cases where newspapers and periodicals had been seized.

13. Concerning the first case, the authorities had drawn up a summary statement which indicated that there had been a total of 296 cases of passport problems referred to by the LTDH, whatever the period considered. Nearly 200 of those cases had already been settled and the fact that the persons in question had chosen to request action by the LTDH to solve their problems was solely a matter of the Tunisian temperament and mentality, for they would have been entitled to apply to the authorities directly. He also noted that, except for the cases covered by the restrictive provisions he had referred to in replying to the questions contained in section VII of the list, there had been no cases of refusal to issue a passport.

14. "Good reputation" was an old expression which appeared in a law that was 15 years old and no longer corresponded to Tunisia's human rights objectives. The authorities were aware of that, but were unfortunately forced to use that concept. A number of Tunisians committed crimes or offences abroad for which they were not always convicted in the country in question, but of which the Tunisian authorities were informed thanks to international co-operation among police forces and through other sources. By way of an example, he referred to procuring committed by Tunisian nationals in third countries and, in that context, he believed that the restriction on the ground that an individual might injure the good reputation of the country was justified, since it made it possible to maintain Tunisia's prestige abroad.

15. However, since the idea of "good reputation" was a flexible one, it was obviously necessary to strike a proper balance and not commit what might be regarded as a violation of the sacred right to freedom of movement. Accordingly, in order for the limitation in question to be applied, there first had to be a decision by an ad hoc committee of the Ministry of the Interior composed of the Director-General for Political Affairs, the Director-General for Legal Affairs and Public Freedoms and a representative of the Minister's cabinet. Such a decision was thus within the exclusive competence of the Ministry of the Interior. Generally speaking, the authorities made every effort to keep cases of restrictions on the issuance, renewal or extension of a passport to a minimum and, in any event, a commission was currently revising the 1975 Passports Act.

16. In reply to Mr. Myullerson's question, he said that the 1975 Passports Act contained two articles that were relevant in that regard: article 16, concerning cases of compulsory withdrawal, and article 13, which read:

> "Every Tunisian national is entitled to be issued with a passport and to have it renewed or extended subject to the following restrictions:
>
> (a) If he is a minor or legally disqualified and unable to produce an authorization from his legal representative. However, in cases of disagreement concerning the issuance, renewal or extension of a passport

between the holder of paternal authority and whichever parent has custody of the minor, the duly authorized administrative authority must comply with the decision of the court of first instance which has territorial competence and which shall be seized on the initiative of one of the parties.

(b) If he is old enough to be required to perform military service and cannot produce a certificate of exemption or deferment.

(c) At the request of the Office of the Attorney-General, if he is the subject of legal proceedings or is wanted for a crime or offence or to serve a prison term as a result of a conviction.

(d) For reasons of public order and security or injury to the good reputation of Tunisia."

17. Mr. ABED (Tunisia), replying to the concerns expressed by a number of members of the Committee, said he would provide some clarifications concerning the restrictions on the issuance of passports. Such limitations were now applied with the greatest care and the committees entrusted with the files were subject to governmental supervision. He also stressed that expulsion orders against aliens were administrative decisions taken at the highest level; it was the Minister himself who issued the orders and the persons in question had the possibility of appealing the decisions. In addition, a stay of execution of the expulsion order must be issued within 24 hours, an extremely short deadline; a judge was entrusted with verifying the lawfulness of all those procedures and could also confirm or annul the Minister's decision.

18. The CHAIRMAN invited the delegation of Tunisia to reply to the questions contained in section VIII of the list of issues, which read:

"VIII. Freedom of religion and expression; prohibition of propaganda and incitement to national, racial or religious hatred (articles 18, 19 and 20)

(a) Are there any prescribed procedures for official registration or for obtaining necessary authorizations by religions or religious sects other than Islam, Catholicism or Protestantism and the Jewish faith? How many such small religious sects are actually established in Tunisia?

(b) Have any local periodicals been seized or any foreign periodicals been prohibited by the Minister of the Interior during the reporting period? If so, please provide relevant details. (See paragraph 120 of the report.)

(c) Please provide information concerning the activities of the Higher Communication Council since its establishment in January 1989."

19. Mr. ABED (Tunisia), replying to the questions contained in paragraph (a), said that there was no registration for the different religions in Tunisia. The exercise of religious freedom was a right embodied in the Constitution.

Tunisia was a country of tolerance and, for example, in the case of the Jewish community, a minority group in Tunisia, freedom to practise its religion was guaranteed by the Act of 11 July 1958. Its religious leader was a rabbi whose name was proposed by the members of the community and whose appointment was confirmed by a decree of the President of the Republic. In the case of the Muslim community, the situation with regard to the designation of the Grand Mufti was similar. The status of the Catholic community was determined by an agreement concluded in 1964 between the Tunisian Government and the Holy See. The other religious communities were quite small, but also enjoyed complete freedom to practise their religion.

20. Mr. FELLOUS (Tunisia), replying to the question contained in paragraph (b), said that the Ministry of the Interior had had to resort on three occasions to the provisions of the Press Code to order the seizure of an issue of a periodical. Those measures had been exceptional in nature and had been taken on the grounds of serious breaches of the law and disturbances of public order, to the exclusion of any other considerations. The cases in question had been the seizure of issue No. 110 of the weekly Al-Mawqif for spreading false information (art. 49 of the Press Code) and publishing prohibited writings (arts. 61 and 62 of the law relating to the press); issue No. 175 of the weekly Réalités, dated 16 December 1988, pursuant to articles 43 and 73 of the Press Code; and issue No. 9 of the periodical Al-Fajr for disturbing public order, publishing prohibited writings and inciting to rebellion.

21. In reply to the questions raised concerning paragraph (c), he indicated that the Higher Communication Council, established under a decree of 30 January 1989, was responsible for devising measures to guarantee full freedom of expression, information and communication, facilitate the development of legislation in that field and develop and improve the quality of the technical infrastructure of communications. In order to guarantee its independence from the public information bodies, the Council had been directly attached to the Office of the President of the Republic, to whose budget all its operating expenses were charged. It was composed of 11 members chosen from among leading figures who were of proven competence in communications and culture and who represented all political tendencies and all orientations of civil society. It met at least every other month and since its establishment, had already given the Tunisian "media scene" a new look in that it worked to ensure respect for the principle of pluralism and the right of various political tendencies to express their views on radio and television. It had thus helped to put an end to propaganda in favour of certain personalities or a single party.

22. Mr. DIMITRIJEVIC said that he would like to know what was meant by the expression used in paragraph 120 of the report, which stated that "The creation of a new periodical is subject only to prior notification to the Ministry of the Interior". If a periodical could be created simply by notifying the Ministry of the Interior, it was surprising, as indicated further on in the same paragraph, that the authorities could refuse, "giving the reasons", and that the refusal could be appealed against to the Administrative Tribunal. He would therefore like to know whether what was involved was only a notification or whether an authorization had to be officially issued by the Ministry of the Interior and, if so, on what grounds that authorization might be refused.

23. As to the question of defamation, which had been mentioned during the consideration of the second periodic report of Tunisia, but had not yet been answered, he referred to paragraph 121 (d) of the third periodic report. He noted that defamation committed through the press was a punishable offence, obviously in conformity with article 247 of the Penal Code and article 50 of the Press Code, as stated in paragraph 114 of the report, but he would like to know what was meant in Tunisia by the term "official bodies" (para. 121), which he found rather old-fashioned. He would also like to know whether the current trend in Tunisia, as in most countries, was to be much less concerned than before with protecting leading political figures and other personalities from the curiosity of the public and, thus, against risks of defamation or whether there was still a relatively rigid system for protecting persons at the highest levels in the hierarchy.

24. Another of the questions raised earlier and left unanswered related to the role of the electronic media, which, in many countries and especially the developing countries, had a strong influence on public opinion. Similarly, since radio and television were largely controlled by the State, he would like to know to what extent objectivity was guaranteed, whether there was a private body to formulate regulations for the audio-visual media and whether there were any rules in that regard to guarantee the right of everyone to seek, receive and impart information and ideas of all kinds (art. 19 of the Covenant).

25. Referring to paragraph 119 of the report, he noted that journalists were entitled to terminate their contract without prior notice if a change occurred in the character or policy of the newspaper that injured their honour or reputation. That was indeed a guarantee of the freedom of conscience of the persons concerned, but, in such cases, they had virtually no other choice than to quit their jobs, even though they did receive compensation. In his view, authorizing journalists to terminate their contract was not enough to guarantee freedom of the press and it would be preferable for journalists to be able to take part in the management of the press enterprise, for example, by being represented on the board of directors or having a say in the appointment of the editor-in-chief, so that they could give their opinion in particular on the publication's impartiality. He would like to know what the situation was in Tunisia in that regard.

26. Mr. COORAY, referring to the question of defamation, asked to what extent proof of the facts was an effective defence when the person concerned held public office and what other remedies were provided for in the Press Code. He also wished to know on what grounds journalists were usually authorized to obtain information from members of the executive. Concerning the publication of newspapers and periodicals, he asked whether it was possible to appeal against a decision by the Ministry of the Interior to refuse authorization to publish and, if so, what body considered the case and under what conditions. He would also like to know whether it was possible to appeal against the decision of the court of first instance suspending the publication of a periodical and whether the director of the periodical could invoke any of the provisions of article 19 of the Covenant to challenge the suspension decision.

27. Mr. Dimitrijevic took the Chair.

28. Mr. ANDO noted that there was often a fine line between criticism and defamation, in particular with regard to the authorities or the Government, and he would like some specific examples in that area. He would also appreciate some examples of cases where the right of reply mentioned in paragraph 121 (b) had been exercised, in particular by official bodies which considered that they had been unfairly criticized.

29. Mr. WENNERGREN, noting that article 8 of the Tunisian Constitution stated that "Freedom of opinion, expression, the press, publication, assembly and association is guaranteed and shall be exercised in accordance with the law", asked whether such freedom included freedom to seek, receive and impart information and ideas of all kinds, as provided for in article 19, paragraph 2, of the Covenant, or whether the authorities might possibly be prevented from supplying journalists with information because they were bound by the obligation of professional secrecy or discretion. He would also like further information on what the Tunisian authorities meant by "in accordance with the law". The provisions of the Penal Code restricting freedom of expression might be so broad in scope that individuals would no longer have any possibility of expressing opinions that might be contrary to those of the authorities or the Government. The amendments made to the Tunisian Press Code in 1988 were certainly an improvement, but he wondered why a person accused of defamation when the person claiming to be the victim was the President of the Republic or a Minister could not avoid conviction by providing proof that the facts he had put forward were true.

30. He also asked whether the provisions of Tunisian legislation were in keeping with those of article 19 of the Covenant stating that the exercise of freedom of information might be subject to certain restrictions necessary for the protection of public order and how the concept of public order was interpreted in Tunisia.

31. Mr. ABED (Tunisia) replied that the Press Code, which dated from 1975, had been amended and improved in 1988, but he did not doubt that - as in the case of the legislation of a large number of countries - it could be further improved to provide an even better guarantee of freedom of expression.

32. As an example of the way the Press Code was implemented in Tunisia, he referred to a recent case of defamation through the press involving an ambassador of Tunisia in the performance of his functions. The authorities had in no way prevented the weekly that had published the article from appearing, although the Press Code provided for drastic measures that could be applied immediately. In that case, the person in question had had to go to Tunis and institute proceedings in the courts, which had played their role with complete independence and impartiality. In that case, however, the persons concerned had not been able to provide proof of their allegations. It was thus true that the Press Code did contain some provisions that might be described as archaic and that journalists were afraid of coming under such provisions, but it should be stressed that, as shown by the example he had given, the legislation was interpreted and applied flexibly.

33. He noted that, in the developing countries, especially if they were undergoing changes, accusations and complaints were frequent. The authorities then had to verify the authenticity of the allegations made, for, as had

happened in Tunisia, such means were often used to hamper the country's progress towards greater democracy and curb the positive steps it was taking towards full respect for human rights and fundamental freedoms.

34. Mr. FELLOUS (Tunisia), replying to Mr. Dimitrijevic's questions, said that, according to article 13 of the Press Code, the authorization issued by the Ministry of the Interior for the founding and publication of a newspaper, periodical or journal was an administrative decision and such an authorization was granted only to applicants who fulfilled all the necessary conditions. With regard to the freedom of expression granted the electronic media, he was afraid that he had not fully understood the question that had been asked. He wished to know whether Mr. Dimitrijevic was speaking only of radio and television. In any event, as he had said before, the Higher Communication Council had undertaken to strengthen freedom of expression on State radio and television. In addition, anyone who so wished could establish his own private radio or television station. As to journalists' freedom of conscience, there were no provisions in Tunisia preventing journalists from associating with the management of the newspaper or periodical to which they belonged, whether in the public or in the private sector.

35. Referring to the questions raised by Mr. Ando, he said that there were not many specific examples, but that he could cite the case of a Tunisian Minister who had recently been attacked in a newspaper with limited circulation. The Minister had been able to exercise his right of reply and the case had been brought before the courts in the form of a libel suit. The newspaper had then been sentenced to a modest fine without being prevented from publishing, but the Minister whose reputation had been called in question had had to resign from his post.

36. With regard to Mr. Ando's second question concerning the right of reply in the press, he said that that was a very widespread practice. Tunisia believed that private individuals had as much need as the authorities to be defended against abuses committed by the press, which could make mistakes, and it granted persons who believed they had been injured by a press article the right to have a correction printed in the newspaper or periodical that had published the original article. After the change that had taken place in 1988, there had been major amendments to the Press Code. The Public Prosecutor could no longer ban newspapers or periodicals sine die simply at the request of the Ministry of the Interior; after consulting the Minister of Information, the Minister of the Interior could now seize only a single issue of the publication in question, provided there was a potential threat to national security and public order, and he could do so only with a court order. The concept of public order was admittedly extremely vague if it was not delimited by very strict criteria aimed at allowing no human rights violations. The changes in the old legislation were thus important ones. He acknowledged that much remained to be done and said that committees were now at work in Tunisia on amending all the codes in order to bring legislation more into line with the provisions of the Covenant.

37. The CHAIRMAN invited the delegation of Tunisia to reply to the questions contained in sections IX and XI (section X would be considered separately) of the list of issues, which read:

"IX. Freedom of assembly and association (articles 21 and 22)

(a) Did the three new political parties established after the promulgation of Act No. 88-32 of 2 May 1988 participate in the parliamentary and presidential elections held on 2 April 1989 and with what results? What is the present political composition of the Tunisian parliament?

(b) How many applications to authorize the functioning of political parties have been rejected pursuant to Organic Law No. 2 of 2 May 1988 and on what grounds?

XI. Right to participate in the conduct of public affairs (article 25)

Please clarify whether the denial of the right to vote to persons sentenced to terms of imprisonment exceeding three months or to a suspended term exceeding six months applies only for a specific period after sentencing or permanently. (See paragraph 149 of the report.)"

38. Mr. FELLOUS (Tunisia), replying to the question contained in section IX (a) concerning the three new political parties formed following the promulgation of the Act of 2 May 1988, said that they were the Rassemblement Socialiste Progressiste, the Parti Social pour le Progrès and the Union Démocratique pour le Progrès. Their establishment had brought the number of political parties in Tunisia to seven. They had taken part in the parliamentary and presidential elections of 2 April 1989 and had obtained the following results, in percentages of the total number of votes cast: Rassemblement Socialiste Progressiste: 0.37 per cent; Parti Social pour le Progrès: 0.21 per cent; and Union Démocratique pour le Progrès: 0.15 per cent. Victory in the legislative elections had gone to the candidates of the Rassemblement Constitutionnel Démocratique, which had won all 141 seats in the Chamber of Deputies. The Electoral Code provided that seats in the Chamber of Deputies were to be filled in a single election by list (one or more), by majority vote and with the possibility of combining lists, so that voters could cross out names from one list and replace them by names from other lists.

39. The question contained in section IX (b) related to the number of applications to authorize the functioning of political parties that had been rejected and to the grounds for such refusals. Under the Organic Law of 3 May 1988, any organization wishing to set itself up as a political party had to meet a number of basic requirements, the main ones being to respect and protect human rights as defined in the Constitution and the international conventions ratified by Tunisia, as well as the nation's achievements, and in particular, its republican form of government, its basic precepts, the principle of the sovereignty of the people and the principles governing personal status. The future party must ban violence, fanaticism, racism and any other form of discrimination; it must not base its objectives on one religion, language, race, sex or region. Other conditions were that the party's founders and leaders must have had Tunisian nationality for over 10 years and must not have been sentenced to an unsuspended term of imprisonment exceeding three months or to a suspended term exceeding

six months, unless they had been rehabilitated. It was also necessary to file a statement at the headquarters of the Ministry of the Interior indicating the name, objectives, motto and headquarters of the party, the names, birth dates, profession and domicile of the founders and leaders, etc.

40. It should be noted that, on 8 February 1988, the Ministry of the Interior had received an application to authorize the functioning of a political party that had been refused because it had not met the basic conditions set forth in article 7 of the Organic Law, since some of the founders had been sentenced to an unsuspended term of imprisonment of three years. In addition, 10 or so applications to establish political parties had not been considered because they contained legal irregularities. The decision to refuse an application could be appealed to a special chamber of the Administrative Tribunal chaired by the presiding judge of the Tribunal and composed of a divisional judge of the Administrative Tribunal, a divisional judge of the Court of Cassation and two leading figures with special competence in political and legal matters. To date no such appeal had ever been filed by candidates whose application had been rejected.

41. Mr. ABED (Tunisia) said that, in most cases where applications to authorize the functioning of political parties had been rejected, the rejection had been on the ground of legal irregularities or, in other words, insufficient knowledge of the law. That explained why the refusals had not been appealed before the special chamber.

42. Turning to section XI of the list of issues, which dealt with the right to participate in the conduct of public affairs, he said that the right to vote was not denied permanently to persons sentenced to an unsuspended term of imprisonment exceeding three months or to a suspended term exceeding six months, since the Tunisian legal system provided for the possibility of rehabilitation. Articles 367 and 370 of the Code of Penal Procedure provided that rehabilitation was granted after a period of three years following the completion of the sentence, its prescription or its reduction in the case of criminal penalties and after one year following completion of sentence for other offences, subject to good behaviour during the period of detention. The person in question could then ask to be re-entered in the electoral rolls.

43. The CHAIRMAN invited the members of the Committee to ask questions on the information provided by the Tunisian delegation.

44. Mrs. HIGGINS, referring to problems that persons of the Muslim faith were recently reported to have had in the civil service, said that she would like to know whether there had been cases where members of that particular group of civil servants had been dismissed.

45. Mr. ABED (Tunisia) said that the very strict rule applied in the Tunisian civil service was that no indication concerning a civil servant's religion could appear in his file. He could therefore not say whether there had been cases where civil servants of the Muslim faith had been dismissed. According to Tunisian legislation, no civil servant could be dismissed without a valid reason and it was for the Disciplinary Board to determine whether an offence had been committed in the performance of a civil servant's functions, in which case dismissal was the ultimate penalty. The decision in such a case could be

appealed. There were long lists of appeals to quash administrative decisions in Tunisia and many cases where the decisions had been quashed. It was, however, impossible to say whether those decisions involved followers of Islam.

46. The CHAIRMAN invited the representative of Tunisia to reply to the questions contained in section X of the list of issues concerning protection of the family and children:

"X. Protection of the family and children (articles 23 and 24)

(a) Please clarify the relationship between the Superior Council for Child Affairs and the Ministry of Childhood and Youth and provide information concerning their activities since their establishment in May 1988 and February 1989, respectively.

(b) Please comment on how well articles 53 and 55 of the Labour Code relating to the employment of minors are observed in practice. (See paragraph 145 of the report.)"

47. Mr. AMAMOU (Tunisia) said that the Superior Council for Child Affairs was a specialized interdepartmental advisory body which assisted the Minister of Childhood and Youth, who chaired it, in formulating government policy regarding children. As a result of its interdepartmental structure, the Superior Council for Child Affairs reflected the point of view of the other ministerial departments that dealt with children, such as the departments of justice, the interior, public health and education. Other State-approved national and non-governmental organizations working with children were also represented on the Superior Council for Child Affairs.

48. With regard to the implementation of articles 53 and 55 of the Labour Code relating to the employment of minors, all the provisions of the Code were compulsory and the Inspectorate-General of Labour, a division of the Ministry of Social Affairs, was reponsible for monitoring their implementation. It was a body of specialized and sworn civil servants authorized to report violations of the Labour Code by means of statements which were held to be reliable until proved otherwise. The statements were transmitted to the Public Prosecutor's Office, which referred all reported violations of the Labour Code to the Attorney-General's Office. His delegation had no information on the number of violations reported. However, he could state that the Labour Code contained regulations governing vocational training and apprenticeships (art. 346) and protected minor apprentices by stipulating that minors could not begin apprenticeships before receiving the authorization of the Ministry of Social Affairs and fulfilling certain conditions, including a medical examination.

49. The CHAIRMAN invited comments by the members of the Committee.

50. Mr. PRADO VALLEJO said that the dialogue between the Committee and the Tunisian delegation had been a useful and constructive one and that the oral replies had provided the Committee with a clearer picture of how the Covenant was being implemented in Tunisia. He had taken note with satisfaction of the measures that had been adopted, the changes made and the institutions established since the consideration of the previous report; they proved that Tunisia was making every effort to promote human rights.

51. He would, however, like to point out a few areas in which he believed the situation might be improved. He was thinking in particular of article 154 of the Code of Penal Procedure, under which a person could be convicted on the basis of a police report alone, even without conclusive proof. That provision should be changed. The accused must also have access to a defence counsel and the family must be informed immediately when a person had been detained. Furthermore, the duration of pre-trial detention appeared quite long (it was 48 hours in his own country) and, with extensions, might even be downright excessive (CCPR/C/52/Add.5, paras. 67 to 70). In his opinion, the possibility of providing for a more reasonable period of time should be considered. As to the law on political parties, he was afraid it might be interpreted as restricting the possibility of establishing certain parties, even if he did note with satisfaction that Tunisia was turning towards a multi-party system. Lastly, there seemed to be a very large number of acts for which the death penalty was incurred (CCPR/C/52/Add.5, paras. 48 and 51) and, even if it was true that the President of the Republic often exercised his right of pardon, the law in that regard should be revised.

52. Ms. CHANET said that the dialogue with the Tunisian delegation had enabled the Committee to have a clearer idea of the rapid changes which had taken place in Tunisia and had led to undeniable progress.

53. There were, however, still some matters of concern and, in that connection, the Tunisian delegation was to be commended for not having tried to deny or minimize them. The Committee was aware that age-old traditions could not be disturbed without causing harm. The Tunisian Government must be trusted and perhaps the Committee's comments would help convince the population groups that were still resisting change.

54. She repeated her comments on inequality regarding inheritance, which, although the reasons given were comprehensible, was still incompatible with article 3 of the Covenant. The same was true of compulsory civilian labour, which should be totally eliminated.

55. There was apparently not enough control over the police authorities, since the Committee had received reports of cases of ill-treatment and suicide in police stations. The conditions and duration of custody also did not guarantee adequate protection for the persons concerned.

56. She agreed with Mr. Prado Vallejo's concern about the death penalty. Abolition should be the aim and, in any event, the number of offences carrying that penalty should be reduced.

57. It was to be hoped that, once it was revised, the Passports Act would be less restrictive and fully in conformity with article 12 of the Covenant. That comment also applied to the law governing press. The system of authorizations, the offence of defamation against the head of State and the prison sentences provided for all made that law incompatible with article 19 of the Covenant.

58. She expressed the hope that the Tunisian Government would take all of the Committee's comments into account.

59. Mr. FODOR reaffirmed his satisfaction at the very favourable changes that had taken place since 1987. The release of political prisoners and the efforts to bring the entire legislative system more into line with the provisions of the Covenant augured well for the future.

60. However, there were still some legislative provisions that gave cause for concern. It was true that the Government faced problems owing to the weight of tradition, but some provisions were positively discriminatory. The institution of civilian labour might perhaps meet the praiseworthy goal of fighting unemployment and training young persons, but the way in which it operated made it similar to the practice of forced labour. Act No. 78-22 was thus incompatible with article 8 of the Covenant and should be repealed. The conditions for custody should also be considerably improved. There also did not seem to be full freedom of expression in Tunisia and there was room for improvement in that area as well.

61. He was convinced that, if the Government continued along the same lines, the next report of Tunisia would undoubtedly show that further progress had been made.

62. Mr. EL-SHAFEI welcomed the spirit of co-operation that had prevailed during consideration of the third periodic report of Tunisia. The Committee had learned about Tunisia's new legislation and institutions, which represented definite progress towards the protection of human rights. That progress would be carried even further when the legislative reforms under way had been completed.

63. The Committee had expressed some of its concerns, particularly with regard to articles 7, 8, 9, 10 and 25 of the Covenant. He was confident that the Tunisian delegation would bring all the comments to the attention of its Government and he looked forward with interest to the next report.

64. Mr. ANDO said that the consideration of the third periodic report of Tunisia had been one of the most enriching exchanges in which he had taken part since he had been a member of the Committee. Like the other members, he had welcomed with satisfaction the improvements in the human rights situation, in particular the institution of a multi-party political system. However, he continued to deplore the excessive length of custody and inequality between the sexes in certain fields. He also did not see the reason for the prohibition against establishing a political party for basically regional goals.

65. He hoped that the contents of the discussion that had taken place in the Committee would be brought to the attention not only of the Tunisian Government, but also of the population as a whole.

66. Mr. DIMITRIJEVIC associated himself with the other members of the Committee who had drawn attention to the high quality of the Tunisian report and the outstanding spirit of co-operation that had prevailed during its consideration. Tunisia was, moreover, no longer behind with its periodic reports.

67. The country had obviously made considerable progress, while making sure that changes did not take place too rapidly, thereby guaranteeing more effective protection of human rights. However, although it was true that a Government could follow a new and progressive policy on the basis of old laws, as the Tunisian delegation had repeatedly indicated, the best way of protecting human rights was to establish institutional safeguards; a policy could cease to be applied even though a law was still in force. In Tunisia, that was particularly true of the death penalty, which, although it was not actually applied, was nevertheless linked to far too many offences. The legislation concerning the press and certain provisions that discriminated against women should also be changed. In addition, the Government should adopt a concerted policy aimed at overcoming the problems created, as in all societies, by forces too strongly attached to traditions or certain aspects of religion.

68. As in many other countries, the Government seemed to have difficulty controlling law-enforcement officials at lower levels. The cases brought to the Committee's attention of brutality in police stations had occurred partly because of the excessive length of time spent in custody. Everyone knew that it was at that stage that the arrested person was the most vulnerable and that abuses were committed.

69. Mr. WENNERGREN said that the constructive dialogue that had taken place between the Committee and the Tunisian delegation left the general impression that the country was in the midst of change and that considerable progress had already been made. It was important, however, to proceed step by step, and that was why there were still some gaps to be filled.

70. In addition to the concerns expressed by the other members of the Committee, he stressed the need to improve conditions of custody and, in particular, to eliminate incommunicado detention. He was also concerned by the allegations of torture that had come to his attention, although he knew how difficult it was for any leader to bring about the elimination of that type of practice. Freedom of expression was also not guaranteed as fully as it might be.

71. Mr. MYULLERSON paid a tribute to the Tunisian delegation, which had not only made an effort to reply to all the questions raised, but had not tried to conceal the difficulties Tunisia was encountering in implementing the Covenant. Considerable progress had been achieved in strengthening the protection of human rights in Tunisia. However, he hoped that the inequality between men and women in certain areas would gradually be eliminated. The conditions under which custody took place were still a matter of concern. The right to appeal a criminal conviction, guaranteed in article 14 of the Covenant, also did not appear to be fully ensured by the Tunisian Constitution.

72. He hoped that the Tunisian Government would continue along the path of progress it had chosen.

73. Mr. COORAY expressed appreciation for the constructive exchange of views which had taken place with the Tunisian delegation and had enabled the Committee to measure the considerable progress that had been achieved since 1987. Many of his doubts had been removed, but he still believed that

there was room for improvement in a number of areas, in particular concerning the independence of the Constitutional Council, the availability of effective and rapid remedies, the possibility of independent inquiry into cases of ill-treatment of prisoners and the provisions of the press law concerning defamation and the suspension of a periodical.

74. The Tunisian delegation was to be thanked for the openness with which it had discussed problems in Tunisia and for its co-operation.

75. Mr. NDIAYE explained that, if he had not spoken during the consideration of the third periodic report of Tunisia, that had not been for lack of interest, but because, as a long-standing member of the Committee and an African, he had already been fully aware of the situation in that country. He could state that the situation in Tunisia was sound not only compared to that in other African countries, but also compared to that in countries of other regions that had the reputation of guaranteeing respect for human rights. The Tunisian Government was all the more deserving of credit because the restructuring it had undertaken was giving rise to serious social problems and was taking place at an unfavourable time for the subregion. There was no doubt that the Tunisian delegation would inform its Government of the Committee's concerns so that protection of human rights would be further strengthened.

76. The CHAIRMAN thanked the Tunisian delegation for its oral introduction and replies, which it had attempted to make as thorough as possible. All the members of the Committee had noted that considerable progress had been achieved since the beginning of the restructuring in Tunisia, thus showing that the Government had the political will to pursue that course and make the improvements that were still needed in a number of areas, particularly with regard to liberty and security of person and the treatment of prisoners, about which the Committee had expressed concern. The Government should also strengthen its control over the activities of lower-ranking officials, which had a direct impact on the exercise of human rights. He took the liberty of suggesting that the Tunisian Government, through its representatives, should make efforts to obtain co-operation from all members of the legal professions in order to improve the legal aid system. It was also important to establish a set of remedies, which, besides being essential for the victim, were useful as a deterrent.

77. The date for the submission of the fourth periodic report was 4 February 1993. The Government of Tunisia had the Committee's best wishes in the task it had undertaken.

78. Mr. ABED (Tunisia) noted that the regional context in which Tunisia was currently developing was such that the best way of making progress was to proceed by stages. However, that did not prevent the Tunisian Government, beginning with its President, from being determined to go further still.

79. The exchange of ideas with the Committee had given his delegation a better understanding of the weak points of the country's situation and it would not fail to transmit all the comments that had been made to the Government and the various committees in charge of the revision of legislation. It would inform the Committee of the reforms as they were adopted and even before the submission of the next report.

80. With regard to the specific cases that had been brought to the attention of some members of the Committee, the authorities would see to it that inquiries were conducted to shed light on them and, in any event, they would strengthen the necessary monitoring and supervision so that cases of that kind, which might occur in any country, should happen as seldom as possible in Tunisia.

81. He hoped to see the members of the Committee in 1993 to be able to tell them of the progress achieved towards the goals shared by all.

82. The CHAIRMAN said that the Committee had completed its consideration of the third periodic report of Tunisia.

The meeting rose at 1.15 p.m.

UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.993
20 July 1990

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Thirty-ninth session

SUMMARY RECORD OF THE 993rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 17 July 1990, at 3 p.m.

Chairman: Mr. LALLAH

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Zaire

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Zaire (CCPR/C/57/Add.1)

1. At the invitation of the Chairman, Mr. Sabi, Mr. Mutuale, Ms. Kirongozi, Mr. Luamba and Ms. Nguz (Zaire) took places at the Committee table.

2. The CHAIRMAN welcomed the delegation of Zaire and invited it to introduce Zaire's second periodic report.

3. Mr. SABI (Zaire) said that, since its resumption of relations with international bodies concerned with human rights, Zaire's most recent happy event had been the restoration on 24 April 1990 of political and trade union pluralism in the country. The Government thought that henceforward there would be a new context for good relations with the Human Rights Committee.

4. Introducing the second periodic report (CCPR/C/57/Add.1), he recalled that Zaire had submitted an initial report (CCPR/C/4/Add.10) in 1987 and subsequently in 1988, an additional report (CCPR/C/4/Add.11) which Zaire had intended to be in lieu of the second periodic report. Having been informed in February 1989 by the Centre for Human Rights that the supplementary report could not be regarded as replacing a second periodic report, the Executive Council of Zaire had duly submitted a report (CCPR/C/57/Add.1) in conformity with the requirements of the Covenant. In view of the short time which elapsed since the earlier submissions in 1987/1988, the second periodic report was of necessity brief and confined itself to providing information about subsequent changes. He then read out parts II, III and IV of the report, relating to changes in national legislation since July 1987, the difficulties faced in protecting and promoting citizens' rights and progress achieved.

5. He further recalled that when the initial report had been presented in July 1987, there had been a battery of questions, particularly on the subject of the Constitution then in force. Consequently, he wished to give some account of the recent political changes which had taken place in Zaire and the subsequent amendments to the Constitution. After a referendum, which had lasted about a month, the President of the Republic had announced in a speech on 24 April 1990 the abandonment of the one-party system. That entailed the abolition of the People's Revolutionary Movement (MPR) as the sole institution in the country so that there was no longer a "Party-State and the property of the Movement reverted to the State. President Mobutu had announced that he was no longer the head of the party, which thus had to find a new leader, and he had retained only the offices of President of the Republic and Chief of State. To the satisfaction of the majority of citizens, the multi-party system which had existed in Zaire in the period immediately following independence in 1960 had been restored. The current political maturity of the Zairian people held out good prospects that the new experiment in political pluralism would avoid the errors of the past. The President had announced that three parties would participate in Zaire's political life under the Third Republic, and that a transitional Government formed on 4 May 1990 would be responsible for making the necessary institutional arrangements. A new constitution would be drafted by an ad hoc commission. Meanwhile, the current constitution, which would remain in force until 30 April 1991, had been

extensively revised to expunge all the provisions referring directly or indirectly to the single party of the MPR and to add provisions for political pluralism. The functioning and financing of the three political parties would be covered by a bill currently under consideration by the Legislative Council, which was the Zairian Parliament. Primary, legislative and presidential elections would be held between 1 January and 31 December 1991 to choose deputies and the President of the Republic in accordance with the principles of political pluralism announced on 24 April 1990.

6. The Family Code which, as stated in the second periodic report, had come into force on 1 August 1988, introduced two important innovations. Although married women still suffered from certain legal disabilities, the Code recognized the right of a widow to succeed her deceased husband. That had not been the case in the legislation inherited from Zaire's colonial past, still less under custom. Another important aspect of the Family Code was the abolition of the concept of the natural child. Thus, article 591 provided: "Every Zairian child must have a father. No one has the right to abandon his child, whether that child is born in or out of wedlock." The Zairian legislature in 1986 had thought that it was indeed repugnant to the African mentality that a man should abandon the child for whose existence he was responsible.

7. The Executive Council of Zaire had submitted to the forty-sixth session of the Commission on Human Rights a voluminous report with numerous annexes recounting all the country's activities to protect and promote human rights, particularly since the establishment of the Department of Rights and Freedoms of the Citizen in October 1986. The Executive Council requested members of the Human Rights Committee to refer also to that report when considering Zaire's second periodic report.

8. The CHAIRMAN invited the delegation of Zaire to reply to the questions raised in the various sections of the list of issues to be taken up in connection with its second periodic report.

I. Constitutional and legal framework within which the Covenant is implemented (article 2 (2) and (3))

(a) Please clarify the status of the Covenant within the Zairian legal system. Can it be directly invoked in court and, if so, have there been any instances where that has occurred? How are contradictions between domestic legislation and the Covenant resolved?

(b) Please clarify why, under the reform of the constitutional system, the number of authorized political parties has been limited to three.

(c) Please clarify the powers and functions of State Commissioners (Ministers) in respect of appeals from Supreme Court decisions, particularly those of the State Commissioner of the Department of Rights and Freedoms of the Citizen.

(d) Please provide additional information on activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol.

(e) What follow-up has been given to the Committee's views in respect of communications Nos. 138/1983, 241/1987 and 242/1987? Please comment on allegations that the authors of communications to the Committee under the Optional Protocol have been subjected to legal action.

9. Mr. SABI (Zaire), replying to question (a), said that from its colonial past, Zaire had inherited the Franco-Belgian system of constitution, legislation and regulations. The revised Constitution of July 1990 provided in article 59 that a duly ratified treaty took precedence over national law in the event of any conflict between them. Moreover, the same article provided that if the Supreme Court of Justice, upon consultation by the President of the Republic or the National Assembly, declared that a treaty before the legislature contained an article which conflicted with the Constitution, it should be ratified only after the Constitution had been appropriately amended. That provision showed the privileged status of the Covenant in relation to the Constitution itself. Zaire had also adopted enabling legislation in respect of the provisions of the Covenant, as for example the Family Code and the 1986 National Education Act.

10. In answer to question (b), he recalled that at independence in 1960 there had been no fewer than 44 parties - a state of affairs that had brought about anarchy resulting in the deaths of 500,000 people and that had enabled the army to take over power in 1965. President Mobutu had then abolished all political parties, but a referendum had been held in 1967 to ask the people how many political parties they wished to have. The answer had been two but unfortunately, in 1974, the People's Revolutionary Movement had been instituted as the sole party, a situation which had lasted until the most recent revision of the Constitution in 1990. In view of the sad experiences of the past and based on the view expressed in the 1967 referendum, it had been thought reasonable to set the number of political parties at three as a start.

11. Replying to question (c), he said that the Supreme Court of Justice represented the final court of appeal in Zaire which could not be overruled even by the Minister for Rights and Freedoms of the Citizen. If the Minister considered that a Supreme Court decision contained a misjudgement, the only course of action open to him was to consult with the Minister of Justice to see whether the injustice committed could in some way be repaired.

12. Answering question (d), he said that the Department of Rights and Freedoms of the Citizen had already published a booklet which informed citizens about their rights in relation to the security forces and the courts. A second volume would shortly be published which would deal with the rights of citizens in relation to the administrative authorities and would contain information about the provisions of the Covenant and the Optional Protocol.

13. Finally, in reply to question (e), he assured the Committee that no legal proceedings had ever been taken against the authors of communications under the Optional Protocol.

14. Mr. NDIAYE welcomed the high-level delegation from Zaire and expressed the hope that its dialogue with the Committee would supplement the second periodic report, which unfortunately did not observe the guidelines regarding the form and contents of reports set out in paragraphs 5-7 of document CCPR/C/20. Basically, the report referred only to changes in national

legislation since July 1987, and the information on other points such as questions raised by the Committee, difficulties experienced in implementing the Covenant and progress achieved since the previous report was far too brief.

15. Turning to the answers which the Zairian representative had given to section I of the list of issues, he inquired whether the legislature was required to consult the Supreme Court before ratifying a treaty or merely empowered to do so if it had doubts as to the constitutionality of the treaty. Consultation with the Supreme Court on the matter should be obligatory.

16. With regard to question I (b), he recalled that, when the Committee had considered Zaire's initial report, there had been a lengthy discussion on the merits of the one-party system. The representative of Zaire had delivered a learned address on the subject of the origins of political parties, and on the negative influence of a multiplicity of parties on national unity. The Committee had pointed out that while the authenticity of the various African cultures should be respected, African peoples should not be regarded as museum relics, to be preserved in their primal state, but rather as living entities, whose real needs had to be taken into account. He was therefore pleased to note tha' Zaire had now authorized the formation of three political parties.

17. However, although it was true that there was no longer a one-party system, the ruling party was still the one in control of all the machinery of State. In holding a referendum which would recognize only three parties out of a large number of political groupings, was not the Government in effect simply holding a plebiscite in support of that ruling party, which was the only one capable of organizing a political campaign and putting forward political ideas?

18. In reply to question I (d), the Zairian representative had stated that a number of publications on the subject had been or would shortly be issued. Although such publications might be valuable from the academic point of view, radio and television broadcasts were perhaps a better way of familiarizing the majority of ordinary people with their rights under the Covenant.

19. On question I (e), the Committee had received several communications from citizens of Zaire who claimed to have been subjected to torture and ill-treatment merely for being found in possession of documents such as the Covenant. He would appreciate a clear statement from the delegation on what appeared to be a very grave situation.

20. Mr. EL-SHAFEI, while welcoming the Zairian delegation, fully supported the previous speaker's observations on the way in which the report had been formulated. The Committee needed much more information on the status of the Covenant as an international agreement in relation to Zaire's domestic laws. It was his understanding that, in cases where there was incompatibility between an international instrument and the Constitution of Zaire, the Constitution would have to be amended. However, there had been no mention in the initial report of any need for revision of the Constitution. He would welcome clarification on that point.

21. One of the cardinal issues raised by the Zairian delegation was the question of the recent referendum. The Committee would be interested to know what questions had been put in that referendum, how it had been conducted, whether prior consultations between political groupings had been allowed, and what were the platforms of the three proposed parties, in order to decide whether the referendum was compatible with article 25 of the Covenant.

22. He had been struck by the reference in paragraph 11 of the report (CCPR/C/57/Add.1) to "open days" organized under the chairmanship of the President of the Judicial Council, when persons on trial could address the President directly. What was the membership of the Judicial Council, and what was its competence? How was it that plaintiffs in court cases could make an appearance before another judicial body, and what would be the effect of a ruling by the Council in such cases?

23. Mr. FODOR said he was particularly pleased to welcome the delegation of Zaire, because until now the relations of the Government of Zaire with the Committee had not been perfect. Although Zaire had been among the first countries to accede to the Convention, its initial report had been considerably overdue. The Committee had not been fully satisfied with the answers given by the Zairian delegation on that first report, and had requested a supplementary report which was now before the Committee (CCPR/C/4/Add.11). That report focused on such matters as the Family Code and the current status of Zaire vis-à-vis the International Labour Organisation (ILO), which were not of direct of concern to the Committee. The latest report (CCPR/C/57/Add.1) was very thin indeed, and could not be considered as a proper basis for fruitful dialogue.

24. He would like to ask why the second periodic report had not been submitted in accordance with the Committee's guidelines. It was evidently not because over the past three years there had been no significant changes in legislation, since the introductory statement by the Zairian representative had indicated that there had in fact been considerable changes. It might be that the country did not have sufficient expertise in the field: if so, he wondered whether it had considered applying to the Centre for Human Rights for advisory services.

25. He would like to know the precise competence of the Department of Rights and Freedoms of the Citizen, in view of the statement in paragraph 14 of the report that it had responsibility for the protection and promotion of human rights. It would seem that the Department was an administrative organ, whereas the main responsibility for protection of human rights was normally held by the courts.

26. He had not fully understood the reply given by the Zairian representative on question I (c), in regard to appeals to the Minister of Justice against Supreme Court decisions. He would appreciate further clarification, particularly in the context of the independence of the judiciary.

27. Paragraph 9 of the most recent report stated that there had been a strong drive to publicize the "Family Code". While lectures and the mass media were useful methods, he wondered whether there was any publication in Zaire similar to the Official Gazette, in which all the laws of the country were included.

28. Lastly, he too would like further information on the institution of "open days". It was difficult to understand why it should be the President of the Judicial Council who should advise persons on trial: did not such persons have the benefit of legal counsel?

29. Ms. CHANET joined in welcoming the very distinguished delegation of Zaire. She associated herself with Mr. Ndiaye's observations on the report's failure to comply with the Committee's guidelines and hoped that clarifications would be forthcoming which would enable the Committee to fulfil its mandate under article 40 of the Covenant.

30. Article 100 of the new Zairian Constitution stated that among the courts and tribunals constituting the country's judiciary were the Court of State Security, the General Council of War, and the War Tribunals and Councils. Could the Committee be told why there seemed to be more courts concerned with war and State security than ordinary courts, and what was the role of such courts in dispensing justice?

31. She would also like to know more about the Minister for Rights and Freedoms of the Citizen: did he have a consultative or an investigative role, and what part had he played in the revision of the Constitution? She had noted, in comparing the old Constitution with the new, that there had been no changes concerning civil and political rights; did that mean that the Government considered that such rights had been adequately protected under the old Constitution?

32. Lastly, in view of the fact that in Zaire such instruments as the Covenant took precedence over domestic law and over the Constitution, what was the role of the Minister in implementing the provisions of the Covenant? Like the previous speaker, she would like to know more about appeals in regard to rights recognized both under the Covenant and under the Constitution.

33. Mr. WENNERGREN said he, too, was pleased to welcome to the Committee a delegation of such high standing.

34. In reply to question I (c) of the list of issues, the representative had stated that recourse could be had to the Minister of Justice in respect of Supreme Court decisions. Was that a systematic method of remedy, or was it a last-resort remedy, for use only in extraordinary cases? What steps could the Minister of Justice in fact take if a person had been wrongly convicted? Could he pronounce a commutation of sentence, or a pardon, or order a new trial? Similarly, what were his powers in cases of wrongful acquittal?

35. Mr. COORAY said the presence of such a distinguished delegation showed Zaire's willingness to enter into a constructive dialogue with the Committee.

36. He was sorry to note that some of the questions he had raised at the time of consideration of the initial report in 1987 in regard to the place of the Covenant in Zaire's domestic law had not been answered in subsequent reports. Where the question under section I (b) was concerned, it appeared that the reason why the number of authorized political parties was limited to three was Zaire's unwillingness to repeat the experience of the past. However, even if the results of the referendum showed that a majority of the people favoured a

three-party system, he would like to know on what basis the three parties chosen had been selected from among so many. He wondered whether that procedure was compatible with the guarantees provided under articles 19 and 22 of the Covenant.

37. Mr. MYULLERSON said that, although the transition from a single-party to a multi-party system was a highly positive development, he was not fully satisfied with the replies given by the Zairian delegation to the question under section I (b). Why could not the people of Zaire themselves decide the number of political parties they wished to support? Restriction of the number of parties to three appeared to contravene article 22 of the Covenant.

38. Concerning question I (e), he had not fully understood the Zairian delegation's reply on the subject of communications received by the Committee. What was the procedure in Zaire for following up such communications, and what had been the Government's reaction to the Committee's views?

39. Mr. ANDO said the postponement of consideration of Zaire's report so that the Committee could have before it the text of the new constitution showed the delegation's willingness to provide a real basis for discussion.

40. He could sympathize with Zaire over the fact that the era of colonialism had left behind unwanted legacies which had hampered the task of building a new nation. The many disparate elements that had been thrown together as a result of that legacy had worked against the establishment of a single centralized power. He could understand the difficulties Zaire had had to face in order to promote and protect human rights in such a new nation.

41. However, he too would appreciate more information on the proposed three-party system. Did the three parties represent, for instance, three different regions or three different types of occupation? He would also like to know whether information on the provisions of the Covenant was being translated into local dialects, and whether it formed part of the curriculum in schools.

42. Mr. DIMITRIJEVIC noted that in the old constitution of Zaire there had been a statement in the preamble that the Zairian people proclaimed their adherence to the Universal Declaration of Human Rights. In the new constitution, that statement had been expanded to include adherence to the African Charter on Human and Peoples' Rights, which in fact had stronger force in law than the Universal Declaration. He would like to know whether that statement had any influence on how the Constitution was interpreted, in the Zairian courts in cases involving human rights.

43. Mr. SABI (Zaire) thanked members of the Committee for their expressions of encouragement, and reiterated that, although much remained to be done, the Zairian Government was determined to press ahead in the cause of human rights.

44. A veritable barrage of questions had been addressed to his delegation, which would endeavour to reply to each of them, though perhaps not in the order in which they had been put. He himself would begin with Mr. Ndiaye's inquiry as to whether a referendum organized at the present time would not return to power the People's Revolutionary Movement (MPR), a force that was

still very much present throughout the country. That was by no means certain: since 24 April 1990, more than 40 active political formations had been created; all would campaign in any process of consultation. Moreover, in 1991, those formations would present themselves before the people, who would determine which three parties would be officially retained in the country's basic political structure. As to the significance of that limitation, he said that the tragic experience of the years 1960-1965, involving the deaths of more than half a million people, had instilled in the Zairian authorities what they believed to be a fully comprehensible prudence. The present state of political maturity of the people called for some measure of restraint in order to consolidate the newly laid foundations of national consciousness recovered and peace restored. True democracy, it was believed, would best be served by limiting the number of political parties.

45. Concerning the dissemination of teaching and knowledge about human rights among the people, he said that in addition to the distribution of printed materials, weekly radio programmes on the rights and freedoms of the citizen were broadcast in French and in the country's four main vernacular languages. In addition, officials responsible for ensuring the exercise of those rights and freedoms carried out grass-roots educational activities throughout the country. Printed material for the popularization of the International Covenant on Civil and Political Rights had been prepared, but translation, printing, publication and distribution were costly. An appeal to the Secretary-General of the United Nations for financial assistance in that connection had so far not been heeded: surely the promotion of human rights justified the investment that had been requested?

46. Mr. Fodor had asked what were the exact powers of the Department of Rights and Freedoms of the Citizen. Its mission was in fact three-fold. Firstly, it had an informatory role: the population was largely illiterate and citizens were frequently unaware of their rights. The first volume of a vade-mecum containing essential information had been prepared for the literate in the four national languages, and its contents were the subject of radio and television programmes and rural campaigns. Unfortunately, for the reasons of costs he had alluded to earlier, the number of copies available was limited.

47. The second of the Department's tasks was to educate citizens in the exercise of their rights, and to guide them in addressing their queries and complaints in that connection through the appropriate channels. The Department was empowered, and indeed obliged, to represent citizens who were incapable of taking the necessary steps on their own, and to intervene on their behalf when all other sources of redress in the case of injustice had been exhausted.

48. Thirdly, the Department was responsible for supervising conditions of detention and the physical well-being of detainees; it was empowered to carry out inspections in detention centres.

49. In addition, an interministerial committee responsible for supervising the application of the international covenants and instruments to which Zaire had acceded (COSPI) functioned within the Department which, in sum, provided complementary guarantees of the protection of rights that was ensured, in the first instance, by law.

50. Concerning the so-called "open days", he said that, rather than an institution, they constituted an activity initiated by the President of the Judicial Council, who was administratively responsible for the functioning of tribunals and courts, in response to popular protest at the extremely protracted nature of judicial proceedings. Circuits were organized throughout the country to inspect and monitor the functioning of the legal machinery and to hear complaints.

51. Referring to article 100 of the Constitution, Ms. Chanet had commented on an apparent predominance of military tribunals. He could reassure her in that connection: the question was basically one of terminology. Zaire had judicial bodies which dealt with ordinary civil and criminal cases; but cases concerning members of the armed forces - and members of the armed forces alone - were handled by military courts, which had a hierarchical structure paralleling that of the civil courts.

52. Mr. LUAMBA (Zaire) first responded to the critical remarks concerning the format of the report. For his part, and as one who had appeared before the Committee on the occasion of the submission of the initial report by Zaire, he could not agree that the established guidelines had been simply ignored. First, on matters which might be described as "general", the Minister, head of delegation, had reported on the general situation in the country. Information concerning changes in national legislation since 1987 - and more particularly the adoption of the Family Code and of the revised Constitution of 5 July 1990 - had been submitted in detail. Secondly, the Zairian delegation stood ready to reply to questions concerning the application of any of the articles of the Covenant. Thirdly, difficulties affecting the implementation of the Covenant and an account of the activities of the Department of Rights and Freedoms of the Citizen, together with a number of informative annexes concerning various meetings and including relevant texts adopted since, virtually, the establishment of the Covenant, formed the contents of the voluminous report submitted by Zaire in March 1990 to the United Nations Commission on Human Rights; if that document had not been duplicated for the Human Rights Committee, that was because of the prohibitive cost. Its existence was, however, considered to justify the somewhat slender nature of the report before the Committee, which had been adversely commented upon.

53. Alluding to the period of 1960-1965 referred to by Mr. Sabi, a return to unrestricted multipartism - which had been the cause of so many difficulties - might not prove totally satisfactory, and it was perhaps better to seek alternatives when mistakes had obviously been made than to persist in error; as Mr. Sabi had said, the decision to limit the number of official parties to three was considered to be a prudent compromise in the interests of national unity and the proper conduct of the nation's affairs: in traditional terms, that would allow for the expression of left-wing, right-wing and centrist opinions in a country whose 35 million inhabitants belonged to no fewer than 200 tribes.

54. With regard to difficulties encountered in implementing the International Covenants on Human Rights to which Zaire had acceded, he reiterated that foremost among them was the issue of ways and means. With the removal of all references to single-party authority, the revised Constitution was - he submitted - even more solidly anchored than its predecessor of 1967 to the provisions of the International Covenant on Civil and Political Rights. But activities such as the popularization of the Family Code in all corners of

what was a very large country required resources which Zaire simply did not possess. Multilateral and bilateral assistance had been sought, so far in vain, to establish and maintain nation-wide telecommunication networks; the United Nations Centre for Human Rights had been asked, three years previously, to help finance the publication of the vade-mecum mentioned earlier; travel by officials throughout the areas for which they were responsible was hampered by transportation difficulties. Under those circumstances, and even with the best will in the world, progress in promoting the Covenants could only be slow.

55. It should be pointed out, however, that notwithstanding those practical difficulties, the International Covenant on Civil and Political Rights enjoyed high status with respect to the Zairian Constitution. Indeed, in case of any conflict between the two, the provisions of the former would be considered as having precedence over those of the latter. More generally, in preparing its accession to international instruments, Zaire would make any amendments to the Constitution that were necessary to achieve full compatibility.

56. Concerning the attributions of the Minister for the Department of Rights and Freedoms of the Citizen, and more particularly the possibility of his intervention in connection with decisions by the Supreme Court, he said that although the decisions of the latter body were final, any appeal to the Department contesting such decisions could be the subject of consultations with the Minister of Justice with a view to settling the matter; one such case was currently under consideration.

57. Concerning the Judicial Council, he explained that it was an institution encompassing the totality of the country's courts and tribunals, both civil and military; they functioned independently, but the supervision and co-ordination of their activities were the responsibility of the President of the Council.

58. Concerning the so-called "open days", he confirmed that they were occasions when the co-ordinator of courts and tribunals heard complaints from citizens who considered that legal proceedings in which they were involved were unduly protracted, who had relatives detained by the senior criminal investigator in violation of the rules governing the duration of custody and pre-trial detention, or who claimed to be in any other situation that was in contradiction with established laws and procedures.

59. Ms. Chanet had been wrong in suggesting that there seemed to be more military than civil courts in Zaire. The country's civil courts were modelled on those of Belgium or France, with a similar hierarchical structure ranging from simple magistrate's courts to the Supreme Court. Military jurisdiction had the General Council of War as its highest instance. Administratively, the two structures were capped by the Judicial Council, which was now more currently referred to as the Ministry of Justice.

60. Concerning the role of the Department of Rights and Freedoms of the Citizen in the constitutional revision of 5 July 1990, he said that the Minister responsible, as a member of the Government, would have participated in Cabinet discussions on the matter, but with no distinct function. He pointed out that in the developing countries, it was often felt that human rights could be more effectively defended by a public than by a private institution; certainly, experience in Zaire had shown that persons eminent in the country's economic and political life, including officials from other

ministries, were quick to communicate and co-operate with the Department - which could in fact be termed the Human Rights Ministry - in matters falling within the latter's competence.

61. On the question of sensitizing the public to the texts of international instruments, he reiterated his earlier remarks concerning the grave lack of resources for that purpose. As for the public impact of referring to the Universal Declaration of Human Rights in the preamble to the Constitution, he said that public utterances, particularly where legal issues were concerned, regularly referred to that and other international instruments; once again, however, to make a population of some 35 million better informed concerning those texts would involve printing and distribution costs that were at present prohibitive.

62. The CHAIRMAN, observing that the delegation of Zaire had referred to a report submitted to the Commission on Human Rights, pointed out that the Committee operated under the International Covenant on Civil and Political Rights and considered reports which States parties undertook to submit under article 40 of the Covenant. It had elaborated guidelines which 40 States parties had complied with in submitting their second periodic reports. The Committee could not best perform its functions by referring to other documents: it had to have the relevant report before it.

63. He noted that an addendum had been sent to the Committee, but it had been dated only 3 July and had probably reached the secretariat only on the previous day, with the impossibility of being translated into the Committee's working languages in time for consideration. Perhaps the unit responsible for Zaire's reports could take into account that all reports and material to be considered by the Committee had to be received in good time. By way of illustration, the secretariat could provide the delegation of Zaire with reports of other countries which were not as short as the present one and which followed the Committee's guidelines.

64. It was true that the Committee had received a copy of the most recent Constitution of Zaire and also of the Family Code, but in the latter connection it would have been better if in the course of the report a detailed examination had been made with regard to articles 23 and 24 and whatever other articles the delegation of Zaire considered relevant.

65. Mrs. HIGGINS supported the Chairman's remarks. The Committee was interested in recent events and had, for instance, been happy to learn of the promulgation of the Family Code. However, its guidelines also clearly required that it should be given detailed information concerning developments with regard to formal legislation and actual practice since it had last met. It was not enough to refer to a document submitted to the Commission on Human Rights and to say that finances were lacking to reproduce it for the Committee. Not only were the Commission's interests not identical with the Committee's, but the effort that Zaire had made for the Commission ought to have facilitated its task for the Committee, since it would have been easy and inexpensive to extract the relevant information from the document sent to the Commission and arrange it under the various headings required by the Committee for its work. Since the delegation of Zaire appeared to believe that the information relevant to the Committee had been given to the Commission, that information would only have required repackaging.

66. Several references had been made to Zaire's financial problems. Although she was aware of the severe financial constraints on Zaire, other developing countries had managed to provide more substantial reports in the manner required. Moreover, many questions were not financial at all: for example, the first part of section I (e) of the list of issues concerned the follow-up to the Committee's views in respect of certain communications: the fact that the Committee had never received a response on any of those communications, despite its repeated requests to the Government of Zaire, could not be a matter of grave financial constraint. She hoped that answers would be forthcoming, since, in cases of violations of the Covenant, the Committee needed to know what remedial action had been taken.

67. On the question of the absence of any significant change in the new Constitution regarding human rights, the Zairian delegation had intimated that the new Constitution was directed not at human rights but at the new political departure towards a more pluralistic system, and that in any event there were adequate constitutional guarantees for the rights under the Covenant. However, it sufficed to go back to the records of the Committee's previous session to realize that that simply was not so. For instance, questions had been raised on articles 12 and 52 of the Constitution and about the absence of compensation provisions as required under the Covenant. An opportunity had thus been available in writing the new Constitution to guarantee the rights under the Covenant more securely; although she welcomed the reforms that were being made, she regretted that that opportunity had been missed.

68. Mr. LUAMBA (Zaire), replying to Mrs. Higgins, said that the revised Constitution of 5 July 1990 was aimed more at political changes than at an increase in human rights guarantees. Under title II of the old Constitution, articles 12-31 dealt only with the rights provided for under the Covenant; whenever reference had been made in those articles to the People's Revolutionary Movement the article in question had been automatically amended in the revised Constitution. The effort of the Government of Zaire was aimed not at increasing the number of provisions to give effect to the Covenant but rather at achieving what was in the Covenant by existing means.

II. Self-determination (article 1)

(a) What is the position of Zaire with regard to the struggle for self-determination of the South African and Palestinian people?

(b) Have the authorities taken any concrete measures against the apartheid régime in South Africa?

69. Mr. LUAMBA (Zaire) said that the Government of Zaire had set up a national committee against apartheid with the mission of promoting and co-ordinating all activities relating to the anti-apartheid struggle. Since 1975 the Government had authorized the Palestine Liberation Organization to have an office in the Zairian capital, and the Government had not missed any opportunity to take a position on the issue of Palestine. In a historic speech to the United Nations of 4 October 1973, the President of the Republic of Zaire had said that the Palestinians should have a homeland and that there should be secure frontiers for all States in that region. The position of the Government of Zaire on that question had not changed.

70. Mr. NDIAYE, explaining why the questions had been included in the list of issues, noted that article 1 (3) of the Covenant stated: "The States parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations." It was therefore quite appropriate to ask States parties what concrete steps they had taken on behalf of those peoples who could not implement that right themselves.

71. Many States had supported economic sanctions against South Africa, some had broken off diplomatic relations, while others had preferred to maintain diplomatic relations and had not judged it timely to apply sanctions. Zaire seemed to be in the latter category. Was Zaire opposed to sanctions as a matter of principle, or were there other factors involved?

72. Mr. LUAMBA (Zaire) said that Zaire's position on South Africa had altered slightly. Initially the Government had supported sanctions against the South African régime without negotiations. For the previous two or three years, however, it had supported both sanctions and dialogue.

III. State of emergency (article 4)

Please clarify which provisions of law, if any, govern the imposition of a state of siege or emergency pursuant to article 52 of the Constitution and indicate, in particular, whether in accordance with article 4 (2) of the Covenant the right to life is included among the fundamental rights that cannot be derogated from.

73. Mr. LUAMBA (Zaire) said that after Zaire had become independent the country had gone through a difficult period during which texts had been drafted to institute a state of emergency. However, since 1965 those texts had never been applied; the question of the right to life had therefore never arisen in that context.

IV. Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26)

(a) What measures are being considered to eliminate discrimination stemming from certain provisions of the Civil, Family and Penal Codes in respect of the equality of the sexes, established in articles 3 and 26 of the Covenant? (See paras. 15-19 of the supplementary report (CCPR/C/4/Add.11).)

(b) Are any additional measures being contemplated to protect the right of women to equal opportunity to employment and to equal treatment in respect of remuneration?

(c) Please provide current data concerning the number and proportion of women in Parliament and in other high public offices, the liberal professions, the senior ranks of the civil service and in private business.

(d) Treatment of aliens. In which respects, other than in the exercise of political rights, are the rights of aliens restricted as compared with those of citizens?

74. Mr. LUAMBA (Zaire), referring to the legal incapacity of married women, which still existed in the Constitution, said the reason why that provision had been retained in article 444 of the Family Code was that the legislative authorities did not consider the time was ripe to give full legal capacity to married women, whereas single women, widows and divorced women had the same legal capacity as men. The second aspect of the question was that the Labour Code provided that the husband could oppose his wife's employment, with a proviso that the competent tribunal could overrule the husband's objection. In practice, however, there had been no cases in which the wife had gone to court to ask that her husband's opposition should be overruled: generally the wife preferred to renounce working. The best approach was perhaps to educate women to claim their rights through Parliament; at present there were 10 women members of Parliament and it was up to them to take up the fight. With that exception, women enjoyed all the rights under the Covenant. The principle of equal pay for equal work was applied; a woman university graduate could be a magistrate or a lawyer; 10 of the 420 members of Parliament and three of the 27 ministers were women; there were 70 women out of a total of around 420 doctors, and 15 per cent of the 100,000 civil servants in Zaire were women. Those statistics reflected the progress of women in Zaire.

75. With regard to the treatment of aliens, they enjoyed the same rights as Zairian citizens other than the fact that, as stated in 1967, they were not eligible to vote and could not have access to mining areas.

76. Mrs. HIGGINS asked, as a working woman of full legal capacity, why the Government of Zaire considered that the time was not right for married women to have such capacity, given that women enjoyed most of the civil and political rights under the Covenant. It was not an answer to say that women should acquire a better education and fight to secure that right: the right first had to be given to them. She asked for clarification on the nature of the problem.

77. The CHAIRMAN inquired about the number of women in the magistracy in Zaire.

78. Mr. LUAMBA (Zaire) said that he had no precise statistics on the matter, but at Kinshasa, the capital, there were 24 communes, each with a local court; several lower courts of appeal; a higher court of appeal for the urban region of Kinshasa; and the Supreme Court. There were no female magistrates on the Supreme Court, but there was at least one in the higher court of appeal and several in the lower appeal courts and the local courts. In the local courts women were often in charge of cases dealing with children.

79. As to the question of working women, a married woman could apply for a job, but the law provided that the husband could oppose her wishes. It became a marital issue: in practice, employers, to avoid having the husband turn up at the company and say he did not want his wife to work, asked women to present along with their documents a marital authorization. It was for the wife to ask the competent authority to overrule such opposition.

80. Mr. NDIAYE, noting that the Covenant prohibited discrimination between men and women, said it was conceivable that at present legislation could not be brought into line with the Covenant in Zaire, but it should be recognized that if the husband could oppose the wife's working, that placed the woman in an inferior position, and the observation should be conveyed to the Zairian authorities.

81. The CHAIRMAN noted that Zaire had made no reservations to articles 3, 23 and 26. He found it difficult to understand the reasoning that it was a matter for the family and not the State. It was the State which made the laws: why did it not abolish the law which allowed the husband to oppose his wife's going to work? If that was not possible in Zairian society, why had no reservations been made to those articles?

82. Mr. LUAMBA (Zaire) remarked that it was not always useful to have futuristic legislation. He knew of a State that had drawn up an advanced family code but was not applying it. Instead of passing laws which were far ahead of current attitudes the Government of Zaire thought it better to move cautiously. On the request of the Minister for Rights and Freedoms of the Citizen and of the Parliament, the provision concerned could be suppressed; but in practice the personal attitude of the husband would still exist, and would have to be changed.

The meeting rose at 6 p.m.

UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.994
8 October 1990

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Thirty-ninth session

SUMMARY RECORD OF THE 994th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 18 July 1990, at 10 a.m.

Chairman: Mr. LALLAH

later: Mr. COORAY

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Zaire (continued)

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Zaire (continued) (CCPR/C/57/Add.1)

1. The CHAIRMAN invited the delegation of Zaire to reply to the questions in section V of the list of issues to be taken up in connection with the consideration of Zaire's periodic report. That section read as follows:

"V. Right to life (article 6)

(a) Please provide detailed information concerning the recent events in Lubumbashi indicating, in particular, whether any punitive measures have been taken against the regional authorities who allegedly were responsible for the killings that occurred there.

(b) What are the rules and regulations governing the use of firearms by the police and security forces? Have there been any violations of these rules and regulations and, if so, what measures have been taken to prevent their recurrence?

(c) On how many occasions over the past five years have the courts ordered the death penalty and how often have such sentences been carried out?

(d) What progress has been made in reducing infant mortality in the period under review?"

2. Mr. SABI NGAMPOUB (Zaire) said that the events at Lubumbashi should be seen in the general context of the political liberalization measures announced by the President of the Republic on 24 April 1990. Some people had felt that the measures announced by the President on 3 May 1990 were a step back from the promises made on 24 April. That view had been held by students in Kinshasa, who had reacted very violently, burning buses and private vehicles and making brutal attacks on members of Parliament. Having tried in vain to re-establish order, the public authorities had decided to close the university. The students at Lubumbashi, who had decided to organize a protest march, on 8 May, as an expression of solidarity, had found all the campus exits sealed off by the police. They had learned that a student in whose room military equipment had been found had revealed their plan to the authorities. That student, who had been savagely tortured, had divulged the names of two of his companions and the others had organized a sort of trial, at the conclusion of which the three young men, who were regarded as "informers" and all came from the same region, had been "sentenced to death". The police had intervened in time to prevent their "execution". The students and some of the regional authorities had organized a punitive expedition which had taken place on the night of 10 to 11 May; first the electricity had been cut off, then an assault group of students and outsiders had raided the campus. A dozen people had been seriously wounded during the expedition, and one had subsequently died. The Government had immediately sent the Deputy Prime Minister responsible for internal affairs to the scene of the incident, and a parliamentary commission of inquiry had confirmed the death of a student and

endeavoured to identify the persons responsible. All the civil and military authorities in the Shaba region who had been implicated had been relieved of their duties and brought to justice. The file was being examined by the Department of Public Prosecutions of the Republic of Kinshasa and the public trial would be held in the near future.

3. Concerning the second issue raised in section V, he explained that the police and security forces could use firearms only if instructed to do so by the competent authority, which might be civil or military. Moreover, the crowd would first be called upon to leave the scene, after which three shots would be fired in the air to disperse it; if it failed to obey, the next step would be to use weapons short of firearms. Any violation of that rule was an offence punishable under the Penal Code and the Code of Military Justice. In fact, penalties were not uncommonly applied.

4. Capital punishment was provided for in the Penal Code. Some individuals charged with armed robbery had been sentenced to death two years ago, but the sentences had not been carried out.

5. With regard to infant mortality, he pointed out that the Government of Zaire had a primary health care programme, of which young children were the principal beneficiaries. Although his delegation had no statistics on the subject, there was no doubt whatsoever that infant mortality had declined considerably.

6. Mr. WENNERGREN, noting that none of the persons who had been tried and sentenced to death two years ago had been executed, wished to know their exact situation. How long did a person under sentence of death have to wait before learning whether he would be executed or his penalty commuted? Too long a delay might be regarded as inhuman treatment.

7. Mr. POCAR said that he had listened with interest to the clarifications that the delegation of Zaire had provided on the subject of the events at Lubumbashi, and had taken note of the fact that the persons responsible would be tried in the near future. However, he could not hide his concern about incidents of that type, which revealed a series of gross violations committed by government officials. University professors and members of the People's Revolutionary Movement as well as students had testified that the assault group that had undertaken the punitive expedition on the night of 10 to 11 May comprised public officials as well as students, as indeed Mr. Sabi Ngampoub had just stated. He hoped that a full explanation would be given.

8. Mr. NDIAYE, referring to the events at Lubumbashi, read out a pastoral letter from the church authorities in Lubumbashi which showed that the students had indeed beaten up three of their colleagues, but because they were suspected, with others, of doing away with 23 of their fellow-students who were found to have disappeared. According to that letter, the university campuses had been sealed off and, on the morning of Thursday, 10 May, the students living off campus had gone into town to force all the educational establishments to close. Some scuffles had ensued and, during the night of 11 to 12 May, after the electricity had been cut off, an assault group, whose working methods proved that it consisted of men particularly well schooled in the art of killing, had forced its way onto the campus and worked through a precise list of victims. On the following day, again according to the writers

of the letter, many wounded persons had been evacuated and the university authorities had sent 14 of them to hospitals in the town. That letter, duly signed by persons whose good faith could not be called into question, thus not only gave an account of the events which the delegation of Zaire had reported but also revealed that 23 students had disappeared: he requested a clarification of the matter. He also wished to know what the public authorities intended to do in order to redress the wrongs suffered by the victims and their relatives.

9. Mr. PRADO VALLEJO said that, although he did not doubt that the Government of Zaire strongly deplored the tragic events at Lubumbashi, everything seemed to indicate that the police had used excessive force. However, the circumstances were not absolutely clear, since even the exact number of victims had not been established. He wished to know what kind of reparation would be made to the victims and their families.

10. Mr. MYULLERSON said he shared the concern expressed by other members of the Committee over the serious events at Lubumbashi. With regard to capital punishment, he wished to know whether the persons who had been sentenced to death in the cases mentioned were expecting to be executed, or whether they already knew that their sentences would be commuted.

11. Mr. SABI NGAMPOUB (Zaire) said that his Government had been as shocked as the public and the members of the Committee by the events at Lubumbashi, and had taken the necessary measures. Having heard that bodies had been buried at various locations, the Parliamentary Commission of Inquiry had visited the sites indicated but had found nothing. Apparently, only one person had died. No parent had yet reported the disappearance of a child studying at Lubumbashi. In the atmosphere of freedom that prevailed in Zaire, the population never hesitated to speak its mind; it went without saying that, if such serious events had occurred, no one would have remained silent or hesitated to file a complaint.

12. Under Zairian law, the State assumed civil liability for the actions of its agents and, consequently, in the case in question, for the actions of the civil and military authorities involved in the Lubumbashi affair. The victims would, in due course, bring civil actions for damages. Administrative penalties had already been imposed and criminal proceedings were in progress. His delegation had provided the secretariat with a list of all the authorities implicated, and hoped that a copy would be distributed to every member of the Committee.

13. The members of the Committee had been understandably astonished at the violence of the incidents at Lubumbashi. However, it should also be realized that, in view of the common origin of the students and the authorities concerned, they had had a sort of companionship in misadventure and, unfortunately, free rein had been given to certain tribal sentiments.

14. The Department of Public Prosecutions was obliged to lodge an appeal whenever a death sentence was handed down. In the event that the sentence was upheld, a plea for clemency was addressed to the Head of State, whose decision was final. The preparation of the brief and the consideration of the plea obviously took a certain amount of time. Hitherto, death sentences had been commuted to penal servitude for life.

15. Mr. WENNERGREN emphasized the importance of the time-limits within which the final decision was taken: on humanitarian grounds, the length of time a person sentenced to death had to wait for his fate to be decided should be as short as possible.

16. Mr. SABI NGAMPOUB (Zaire) replied that the law did not stipulate a maximum time-limit. With regard to actual practice, he referred to the example of bandits sentenced to death 18 months previously whose plea for clemency was still under consideration.

17. The CHAIRMAN invited the Zairian delegation to reply to the questions in section VI of the list of issues to be taken up, which read as follows:

"VI. Treatment of prisoners and other detainees (articles 7 and 10)

(a) What legal or administrative procedures guarantee prompt and impartial investigations of alleged violations of article 7 of the Covenant? Have there been any such allegations during the period under review and, if so, were they investigated and with what results?

(b) Please clarify the purpose of Legislative Ordinance No. 89-049 bis of 23 September 1989 and indicate whether any proceedings have been instituted by the Department of Rights and Freedoms of the Citizen pursuant to that law.

(c) Please clarify whether the Zairian Penal Code provides for banishment as a punishment for certain offences.

(d) Please describe the arrangements for the supervision and inspection, on a systematic basis, of places of detention in Kinshasa as well as in the provinces.

(e) Are the United Nations Standard Minimum Rules for the Treatment of Prisoners complied with? How have these provisions been made known to the concerned police, armed forces, and prison personnel as well as, in general, to all persons responsible for holding interrogations? Are the relevant regulations and directives known and accessible to prisoners?"

18. Mr. SABI NGAMPOUB (Zaire) said that deprivation of liberty, from the time of arrest to the time of final sentencing, was governed by several legal texts. For example, under article 76 of the Legislative Ordinance concerning the exercise of the powers of criminal investigation officers, persons held in custody had the right to request examination by a medical practitioner who, if he found signs of ill-treatment, had to report thereon to the Attorney-General or, if he felt that the condition of the person in custody so required, must ensure that the latter was promptly brought before the Attorney-General. Article 80 of that same Legislative Ordinance required members of the Department of Public Prosecutions to make regular visits to places of detention, and empowered them to make unannounced visits at any time, in order to ascertain the hygienic, physical and moral conditions under which detainees were being held. They could order the release of any detainee who appeared to be being held without justification.

19. With regard to question (b), he indicated that, under Legislative Ordinance No. 89-049 bis, which had been signed in 1989, the Department of Rights and Freedoms of the Citizen had been empowered, ex officio, to bring before the courts any case of torture that came to its knowledge. However, since the Ministry of Justice felt that the safeguards in force were sufficient to enable alleged victims of torture to assert their rights, that Legislative Ordinance had been revoked in 1990. The Department of Rights and Freedoms of the Citizen, which had subsequently become a Ministry, had every intention of introducing the bill, because it believed that it was not easy for an ordinary citizen to take on an institution such as the Department of Public Prosecutions or challenge a magistrate who had authorized, or even committed, an act prejudicial to his liberty or his physical well-being. It was hoping to provide victims with more effective protection. Although persons who had been subjected to arbitrary arrest or torture could obviously institute court proceedings, they often lacked the courage to do so, possibly for fear of reprisals.

20. With regard to paragraph (c), he explained that banishment, which was known as "relegation" in Zaire, was an administrative measure. The Ministry of the Interior was empowered to take measures to isolate any individual, which could ultimately lead to his relegation. However, within the context of the political reforms that were being introduced in the country, the Ministry (formerly Department) of Rights and Freedoms of the Citizen had formulated a draft legislative ordinance to abrogate that provision, as it was hardly compatible with the current liberalization endeavours.

21. Concerning paragraph (d), he said that the Department of Public Prosecutions was required to inspect all places of detention in order to ensure that detainees were being lawfully held under proper physical conditions. The Ministry of Rights and Freedoms of the Citizen had also been instructed to inspect places of detention at least once a month; during such visits, its officials were able to check on the legality and duration of detention measures, and the physical condition of detainees.

22. Finally, in reply to the questions in paragraph (e), he assured the Committee that the United Nations Standard Minimum Rules for the Treatment of Prisoners were applied in Zaire. He also drew attention to the fact that, before being admitted to the Criminal Investigation Department, police officers were given legal training under the supervision of the Attorney-General. After completing that training, they were awarded a "diploma" and were sworn in by the Attorney-General, who empowered them to serve as criminal investigation officers. During the course of their careers, they attended refresher or other training courses. The most recent refresher course had focused on the following topics: criminal investigation officers and pre-trial legal procedures; the treatment of detainees; and the situation of administrative detainees. All the relevant regulations and directives were posted on notice-boards in prisons and other places of detention.

23. Mr. FODOR again raised the matter of the recent events at Lubumbashi. According to the information available, Lubumbashi was unfortunately not an isolated case of human rights violations by the military; in recent years, there had also been reports of cases in which prisoners, particularly persons detained for political reasons, had been subjected to physical assault and ill-treatment. Since the law explicitly prohibited ill-treatment, there was

evidently a flagrant contradiction between the law and actual practice. Moreover, cases of arbitrary arrest and prolonged detention without charge seemed to be everyday occurrences; reports had also been received concerning other abuses of authority by police officers (harassment, extortion of money, etc.) and some people had apparently been held in detention until they paid a form of ransom. He wished to know whether those allegations were true and whether all complaints were transmitted to the competent authorities, including complaints from people living in remote parts of the country. If the allegations to which he referred were true, that would imply extremely serious anomalies in police and military discipline. He understood that presidential decrees had been promulgated to put an end to corruption and abuses of authority on the part of members of the police and security services; however, those provisions had, as yet, apparently had little practical effect. He inquired whether the Government of Zaire intended to adopt thoroughgoing measures to tighten discipline among the police and military because their general insubordination unquestionably made it almost impossible to apply the provisions of the Covenant.

24. Mrs. HIGGINS said that the Zairian delegation's reply concerning banishment in Zaire had left her somewhat confused. She had understood that, on 22 May 1990, the National Security Council had announced that the illegal system of banishment had been discontinued, as had administrative internment. However, the Zairian delegation's statements led her to believe that that system was still in force, and for the moment the possibility of abolishing it was only being considered. She wished to know what the exact situation was. She also emphasized that, from the Committee's standpoint, banishment, except where it formed part of a sentence handed down after a fair trial in which the legally stipulated safeguards had been observed, was manifestly incompatible with the Covenant. The fact that authorities other than the judiciary could decide that an individual had behaved in a reprehensible manner and, consequently, should be sent into internal exile, was totally inconsistent with the obligations set forth in the Covenant. She reminded the Zairian delegation that the Committee had received several communications from Zairian citizens on that specific question and, in spite of repeated requests, had not yet received any information from Zaire on the subject. It was of the utmost importance that the Committee should know, on the one hand, what had happened in those cases and, on the other, whether the system was still in force.

25. She also understood that the body known as the "National Security Council" had announced that the places of detention it had formerly used would henceforth be transferred to the police for use as custodial premises. What body would then be empowered to inspect those premises? In the past, the Department of Rights and Freedoms of the Citizen had been responsible for inspecting the detention centres operated by the security services. Now that those centres were to be placed under the authority of the police, would the Department - now the Ministry - retain that responsibility? Those questions were highly important from the practical standpoint, since reports were sometimes received of persons being taken to places that were not detention centres in the official sense of the term: when such individuals disappeared in that way, they slipped through the normal inspection system. She quoted the example of persons who had been arrested in August 1989 and taken to one such secret detention centre on the grounds that they had contacted a committee of New York human rights lawyers while it was visiting Zaire, and were in possession of human rights documents which members of that committee

had given them. They had been taken illegally to a rifle-range, which was obviously not a legal detention centre. Accordingly, the Department of Rights and Freedoms of the Citizen did not know where they were being detained, while they had no means of contacting their families, even to let them know where they were.

26. Mr. WENNERGREN said that, from the Zairian delegation's statements concerning the announcement made by the National Security Council on 22 May, he understood that measures were to be taken, not immediately but in the near future. He wished to know what was meant by "near future" and when, exactly, those measures would be adopted. They were apparently intended to put an end to illegal detention, detention incommunicado and the practice of banishment; they also ordered the closure of all the detention centres operated by the security services. He wished to know what regulations governed the activities and operation of those centres, and requested additional information on custody, provisional detention and the circumstances in which they could be prolonged. Did the provisions applicable to police custody also apply to the detention centres operated by the security services? In particular, were the latter centres subject to judicial control, and were there any limits on the duration of pre-trial detention in such centres?

27. Mr. ANDO referred to paragraph 51 of the additional information provided by Zaire in September 1988 (CCPR/C/4/Add.11), which read as follows: "ILO advocates the formal repeal of Ordinance No. 15/APAJ of 20 January 1938 on the prison system in native districts. The programme of law reform undertaken by the Law Council will enable this aspect to be examined". He wished to know how matters stood one and a half years after the publication of that document. Had the ordinance in question been repealed?

28. Furthermore, he understood from the statements made by the Zairian delegation that prison conditions were not good in Zaire although, according to its delegation, the Government was diligently endeavouring to improve them. He wished to know whether the conditions in military prisons were similar or worse.

29. The CHAIRMAN requested the Zairian delegation to provide, in its reply to the questions that had been raised, specific information on the manner in which prison inspections were organized. Earlier in the meeting, the Committee had been told that officials from the Ministry of Rights and Freedoms of the Citizen had the right to inspect detention centres once a month; what happened in practice? Did the Ministry send an official to each centre, and how was the inspection carried out? With regard to the question of the people allegedly arrested and held in secret detention centres for having contacted a committee of New York lawyers, he asked the delegation to indicate what steps the Ministry took in such cases to exercise its right of inspection. Could the family of an individual thus detained apply to the Ministry for information concerning his fate? Would the Ministry conduct an inquiry to ascertain where the person in question was being detained and how he was being treated?

30. Mr. SABI NGAMPOUB (Zaire), replying to the questions raised by Mr. Fodor, said that no country, however well organized, could ever claim to have eliminated all violations. There were, indeed, violations in Zaire; the authorities were aware of their existence and utterly condemned them. The

Government was doing everything in its power to minimize such violations and, whenever a case had been reported to it, it had imposed the requisite penalties. However, it should not be forgotten that the country was immense and that transport and communications were still inadequate. Still it was essential to put an end to the violations and avoid any recurrence. The Government was endeavouring to do so, primarily through measures to train criminal investigation officers and make them more aware of the problem. He again referred to the example of the refresher courses for that category of civil servants, and said that they were due to be extended to the provinces during the present year.

31. In reply to the questions raised by Mrs. Higgins, he said that the National Security Council had, in fact, announced a series of measures on 22 May. Moreover, those measures had actually been applied ahead of time, in so far as all detainees, notably those detained for political reasons, had been released on 24 April. Although, at the legislative level, the procedure would require more time, he assured the Committee that the measures announced on 22 May would be put into law.

32. Prison inspections were organized once a month, in conjunction with the authority responsible for the place of detention, but officials of the Ministry of Rights and Freedoms of the Citizen could also carry out unannounced inspections whenever they deemed them to be necessary, in order to check on the conditions of detention in those centres. If a family did not know where one of its members was being detained, it could apply to the Ministry, which would then order an investigation.

33. Finally, in reply to the question raised by Mr. Ando, he said that Ordinance No. 15/APAJ of 20 January 1938 was, as its date indicated, an old text and an error had probably slipped into document CCPR/C/4/Add.11; in fact, the prison system in Zaire had been fully reviewed in 1965.

34. Mr. COORAY inquired about Zaire's ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Zaire had announced its ratification of that Convention in February 1989. During the present year, however, the United Nations Treaty Section had announced that it had not received the instruments of ratification. What was the situation?

35. Mr. SABI NGAMPOUB (Zaire) said that his country had ratified the Convention in January 1989 and had subsequently transmitted the instruments of ratification to United Nations Headquarters in New York. There would appear to have been a bureaucratic problem at the United Nations in New York. He assured the Committee that his country had ratified the Convention in due and proper form.

36. The CHAIRMAN invited the Zairian delegation to reply to the questions in section VII of the list of issues, which read as follows:

"VII. Liberty and security of person (articles 8 and 9)

(a) With regard to problems relating to 'forced labour', discussed in paragraphs 49 to 53 of the supplementary report (CCPR/C/4/Add.11), please provide information concerning corrective measures that may have been adopted by the Ministries of Justice, Regional Administration and agriculture.

(b) Is there any maximum limit on the length of pre-trial detention resulting from renewal orders by the examining judge? If there are no such prescribed limits, what is the actual practice of the courts and how is it ensured that pre-trial detention is not extended indefinitely?

(c) How soon after arrest can a person contact a lawyer?

(d) How quickly after arrest is a person's family informed?"

37. Mr. LUAMBA-KATANSI (Zaire) said that, first of all, two general points should be noted. Firstly, the problems which Zaire faced in the application of certain provisions of the Covenant did not arise from the Constitution or its national legislation. There were laws to give effect to those provisions. Most of the problems arose at the local level, and it was actually putting the Covenant into practice which presented difficulties. Secondly, it must be emphasized that the Ministry of Rights and Freedoms of the Citizen had definitely not usurped the functions of the courts, tribunals and other classic institutions. In a way, the Ministry was a last resort, and a citizen who felt that his rights and freedoms had been violated and wished to refer the matter to the Ministry must first prove that he had exhausted all other domestic means of redress. Basically, the Ministry functioned in the same way as the ombudsmen in the Scandinavian countries.

38. In reply to the questions raised in section VII (a) of the list, he said that the United Nations had been wrong in believing that there were problems relating to "forced labour" in Zaire. The purpose of the National Development Act, promulgated in 1976, was to encourage unemployed urban dwellers to seek employment in rural areas and, even if the Act had been put into effect, which was not the case, there would have been no question of forced labour. Likewise, although the Labour Code indeed made provision for the performance of work in the public or collective interest, in the event of a natural disaster or catastrophe, for example, that again was not forced labour. Moreover, on gaining independence, the Zairian Government had endeavoured to remedy the country's lack of qualified personnel, doctors in particular, by introducing the system of "requisition", under which students had been given scholarships to encourage them to study certain subjects at university on the understanding that, on completion of their studies, they would be obliged to spend a few years of their professional lives in the service of the State. That, again, could not be called forced labour, and at all events, the system had been abolished by presidential ordinance in 1987, because it had been found that the country's continuing needs could be met by other means.

39. With regard to the questions raised in paragraph (b), he said that, when a person was arrested, the criminal investigation officer had 48 hours in which to decide whether to release him or refer him to the Department of Public Prosecutions. If there were valid reasons to believe that the person concerned was guilty, he was brought before an examining magistrate, who had five days in which to decide whether to dismiss the case or send the accused for trial. If necessary, that time-limit could be extended by 15 days and renewed once, if the penalty prescribed for the presumed offence was less than one month's imprisonment, or twice if the penalty prescribed was six months' imprisonment or more.

40. Concerning questions (c) and (d), he said that the accused could contact a lawyer immediately after the expiration of the period of detention in custody, i.e. after 48 hours, and the criminal investigation officer was legally bound to inform the family of the arrest immediately.

41. Mr. WENNERGREN inquired about the conditions of provisional detention in the centres operated by the security services and asked what regulations were applicable in that regard.

42. Mr. LUAMBA-KATANSI (Zaire) acknowledged that, in addition to the places of detention supervised by the Department of Public Prosecutions, there were also detention centres under the control of the security services. However, criminal investigation officers had the same status and the same obligations, whether they reported to the Department of Public Prosecutions or the security services. Problems were sometimes encountered in the field, since the security services had the special task of protecting the country's internal and external security. When a person was arrested far from the capital, the criminal investigation officer might be forced to exceed the 48 hour time-limit for custody if communications were difficult, as was often the case.

43. The CHAIRMAN invited the delegation of Zaire to reply to the questions in section VIII of the list of matters to be discussed, which read as follows:

"VIII. Right to a fair trial (article 14)

(a) Please describe the progress achieved since the consideration of the initial report in the recruitment and training of judges.

(b) Is there a legal aid or advisory scheme and, if so, how does it operate?

(c) Information is requested concerning the composition and jurisdiction of the Court of State Security and concerning actual cases, if any, considered by the court since the consideration of the initial report."

44. Mr. SABI NGAMPOUB (Zaire) replied that judges were recruited among persons who had obtained a degree or doctorate in law in Zaire or abroad. They underwent a two-year period of probation under the supervision of a qualified magistrate and were then entitled to serve as a magistrate with the Department of Public Prosecutions or on the Bench. There was an office where accused persons who could not afford the services of a lawyer were given free advice and assistance; the defence of such persons was undertaken by an officially-appointed counsel, whose fees were paid by the State. The Court of State Security was an ordinary judicial body from the standpoint of its composition and the procedure that it followed, its only special feature being its competence to hear matters concerning State security. No significant case had arisen in that area since the consideration of the initial report.

45. Mr. FODOR raised the question of safeguards of the independence and impartiality of the judiciary and requested the Zairian delegation to supplement the information provided during the consideration of the initial report. In particular, he wished to know what links existed between members of the judiciary and the People's Revolutionary Movement, and whether judges were subject to any form of supervision by the central Government.

46. Mr. LUAMBA-KATANSI (Zaire) said that there was a body, known as the Judicial Council, which was responsible for co-ordinating the work of the civil and military courts and tribunals. The judges were independent and, in their administration of justice, concerned themselves solely with the application of the law. Even when the People's Revolutionary Movement had been the sole party, embracing all the organs of government including the Judicial Council, magistrates had not been required to follow the Party's directives; now, too, their only duty was to settle disputes in accordance with the law.

47. Mr. COORAY said he shared the concerns expressed by Mr. Fodor; he wished to know how the law regulated the appointment, dismissal and remuneration of judges and what safeguards of judges' independence there were.

48. Mr. SABI NGAMPOUB (Zaire) said that guarantees of the independence of the judiciary were set forth in article 101 of the Constitution, which stipulated that judges were independent in their administration of justice. The status of judges was also defined in a separate Act, to prevent any interference by the executive in the functions of the judiciary. Even during the period of the single party, when the Central Committee, which had established a standing disciplinary committee, occasionally took a position on some matter, the courts had taken decisions contrary to the Central Committee's opinions. Although that might have given rise to friction, it nevertheless proved the independence of the judiciary.

49. Mr. LUAMBA-KATANSI (Zaire) said that Zaire had "mobile" courts, and judges could thus be required to travel to different districts. Their independence was not compromised thereby; although they could be moved, they could not be removed, inasmuch as they could be dismissed only by decision of the Higher Council of the Judiciary.

50. All judges were duly qualified jurists selected by the Ministry of Justice and, as already indicated, they had to complete a two-year probationary period before being officially appointed by presidential ordinance. The Higher Council of the Judiciary could discipline them for any faults that they might commit.

51. Mr. SABI NGAMPOUB (Zaire) said that there was a special scale of remuneration for magistrates, which differed from that applicable to other members of the civil service and guaranteed their complete financial independence.

52. The CHAIRMAN invited the Zairian delegation to reply to the questions in section IX of the list of issues to be discussed, which read as follows:

"IX. Freedom of movement and expulsion of aliens (articles 12 and 13)

(a) Please provide additional information about the application of article 12 (1) of the Covenant, particularly in respect of restrictions on freedom of movement and on the settlement of aliens.

(b) What special provisions and regulations, if any, pertain to the expulsion of aliens other than those holding refugee status?"

53. Mr. LUAMBA-KATANSI (Zaire) said that, in Zaire, aliens enjoyed the same rights as citizens, with the exception of political rights, and their freedom of movement was restricted only in mining areas, mainly in the vicinity of the diamond, gold, cobalt and uranium mines. Apart from that restriction, the numerous aliens in Zaire were completely free to travel and to engage in the activities of their choice.

54. As far as he was aware, the Constitution and legislation did not contain any explicit provisions governing the expulsion of aliens. If an alien posed a threat to State security he might possibly be expelled, but the law made no provision for measures of that type. With regard to employment, aliens had to obtain a work permit, either ordinary or special in the case of political refugess.

55. Mr. ANDO requested details concerning the situation of the Angolan refugees in Zaire. He wished to know how the refugee camps were organized and whether refugees wishing to remain in the country could do so and find employment. He also inquired about the procedure for obtaining a passport in Zaire and whether women still needed their husband's permission to apply for a passport.

56. Mr. LUAMBA-KATANSI (Zaire) said that large numbers of Angolan refugees had been granted asylum in Zaire since 1961, and had been virtually assimilated among the Zairians. Angolans who did not wish to return to their country could now remain in Zaire and engage in professional activities. The country had no refugee camps as such. Moreover, in 1989, many Angolans had returned to their country of their own free will, with the assistance of UNHCR.

57. The issue of passports was subject to various administrative procedures, as was the case in most other countries. Under the law, a married woman must obtain her husband's permission to apply for a passport, as she must to open a bank account or to travel abroad. However, that rule was not consistently applied.

58. The CHAIRMAN invited the Zairian delegation to reply to the question raised in section X of the list of issues, which read as follows:

> "X. Freedom of expression (article 19)
>
> Has the recently announced liberalization of the political system had any effect on laws and regulations relating to freedom of expression, particularly with regard to easing censorship?"

59. Mr. LUAMBA-KATANSI (Zaire) outlined the present situation. On 24 April 1990, the President had announced the abandonment of the single party principle and a return to a multi-party system. In order to make that change law the Constitution had been revised on 5 July 1990: the provisions concerning the single party had been repealed and replaced by wording allowing for three political parties to participate in public affairs. His delegation had already given a lengthy explanation of the reasons for the choice of three parties. The revision of the Constitution would entail the passage of a law governing the parties, the first four articles of which had already been adopted by Parliament. In substance, it stipulated that the three parties would be financed by contributions from their members and by legacies, so that

they would not have to resort to external funding and would not simply become extensions of foreign political groupings. Moreover, the parties must not identify themselves with any particular ethnic or religious community or any other distinguishing factor referred to in the Covenant, in order to preclude tribalism, racism and discrimination against women.

60. Mr. ANDO inquired about the status of journalists. According to information that he had received, journalists had often been arrested and detained for publishing articles criticizing Government policy. Moreover, radio and television were State monopolies in Zaire, which implied that, to all intents and purposes, their personnel were State employees, had to belong to a particular trade union, and were thus subject to pressure. Did that pressure not have the effect of limiting journalists' freedom, and was the Government doing anything to change matters?

61. Mr. PRADO VALLEJO expressed similar concerns. In view of the fact that, in practice, television and most of the radio stations were a State monopoly, he wondered what steps the Zairian Government had taken to ensure that the right to freedom of expression and freedom of information could nevertheless be exercised. Did persons holding opinions different from those of the Government have access to television and radio in order to express their views? How was freedom of expression guaranteed? Did journalists need a special permit to exercise their profession in Zaire? If so, had there been any cases in which that permit had been refused? Were any journalists in detention, charged with political offences? Was the press censored or free to publish whatever it wished?

62. Mr. NDIAYE asked whether reports of censorship were true, and what procedures had to be completed in order to establish a paper or periodical. The Zairian Penal Code prescribed extremely severe penalties for libel, slander and passing information to foreign countries. He referred, in particular, to articles 74 and 136 of the Penal Code and Ordinance No. 300 of 16 December 1963, and recalled the case of a leader of the Democratic Union of the Socialist Party, reportedly arrested in 1988 for distributing a foreign-inspired pamphlet whose origin seemed to have been the main reason for the accusations made against him.

63. The other major matter of concern to him was the question of access to the State-run media. He wondered whether, in the context of the current reforms and political pluralism, it was also planned to grant access to the media. In the developing countries, the press had such a limited readership that it could barely survive, since sales were limited and private companies that could advertise often hesitated for fear of displeasing the Government. In view of that situation, he wished to know what had been done in Zaire to guarantee the right to freedom of expression.

64. Mr. WENNERGREN noted that freedom of expression was recognized in article 18 of the Zairian Constitution, subject to the limitations stipulated in the Penal Code. Those limitations, however, seemed to leave little scope for freedom to criticize or disagree with Government policy. He therefore wished to know how far Zaire tolerated freedom to express critical or dissident opinions, not only through the printed word but also in other public forms. In other words, where did freedom of expression stop in Zaire?

65. A further matter of concern to him was freedom of information as provided for in article 19 of the Covenant, under which everyone's right to freedom of information included "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". For example, could a private individual in Zaire go to the office of the Minister to whom the Zairian delegation to the Committee reported, namely the Minister for Rights and Freedoms of the Citizen, and ask to be told what complaints had been received from a particular region?

66. With regard to the right of peaceful assembly, which was recognized in article 21 of the Covenant, he recalled that, according to Zaire's initial report, no constitutional or other provision impeded the exercise of that right. He wished to know how far that right was recognized, making it plain that he understood "peaceful assembly" to include peaceful demonstrations. A demonstration by elderly women demanding an improvement in their living conditions had been violently suppressed in Kinshasa in April 1988. He wondered whether that gathering had degenerated into a violent demonstration or whether it had been organized illegally, and would like a clarification of the matter. He also recalled the demonstration which the students at Lubumbashi had attempted to organize in support of their colleagues in Kinshasa but had been prevented from holding. He wondered whether that demonstration, too, had not really been peaceful, and wished to know what rules had to be observed when organizing a peaceful demonstration in Zaire.

67. Mr. MYULLERSON said that he had only three questions to ask, since the preceding speakers had already raised most of those which he had in mind. Firstly, was there any pre-publication censorship in Zaire? Secondly, had there been any cases in which a particular issue of a publication had been seized? Thirdly, were foreign newspapers and magazines sold in Zaire and had there been any cases in which the sale of particular issues of those publications had been prohibited? According to information he had received from various sources, it was prohibited to criticize the President, the police and high-ranking members of the régime. Was there an article to that effect in the Penal Code and, if so, how was it applied and under which circumstances?

68. Mr. COORAY took the chair.

69. Mr. LUAMBA-KATANSI (Zaire) said that, in Africa, television and radio could be run only by the State, since individuals lacked the means to engage in that type of enterprise. As to whether journalists were arrested when they criticized Government policy, he replied that, in fact, that had been the case before 24 April 1990. As the Constitution enshrined the principle of a single-party State, any criticism of the single-party system was a violation of the Constitution. Given the fact that television and radio were State monopolies, freedom of expression could be exercised only within the limits laid down by the single-party system. But the situation had changed since 24 April 1990 and, at the present time, there were a score of different newspapers in Zaire, which could write on any subject and criticize or congratulate the President as appropriate. That change should mark the beginning of a new era for public freedoms.

70. Censorship in Zaire served a dual purpose; firstly, to protect morality, youth and traditional values (prohibition of obscene publications) and, secondly, for political reasons. However, the situation was changing and it

was now possible to express an opinion different from that of the authorities in power. On the other hand, for the reasons already indicated, it was still very difficult to launch newspapers and periodicals.

71. Some members of the Committee had referred to the case of certain leaders of UDPS (the Democratic Union of the Socialist Party). It was true that some UDPS activists had been arrested for advocating a multi-party system, which was against the Constitution. For the same reasons, the Jehovah's Witnesses sect had been prohibited, because it encouraged people to disobey the law (refusing to salute the flag or to wear Party badges). Now that the People's Revolutionary Movement had been disbanded, the situation of that sect would be re-examined. In that regard, he pointed out that there were more than 700 religious sects at Kinshasa, which made it necessary for the State to exercise a certain degree of supervision, particularly in regard to the education of children.

72. Mr. SABI NGAMPOUB (Zaire), replying to Mr. Wennergren's question on the right of peaceful assembly, said that, although that right was recognized in Zaire, application had to be made to the administration for permission to organize a gathering. That rule had been laid down on security grounds, in order to prevent disturbances and protect the public.

73. The CHAIRMAN invited the Zairian delegation to reply to the question raised in section XI of the list of issues, which read as follows:

"XI. Freedom of association (article 22)

Please provide additional information concerning the recently announced introduction of multipartism. How will this affect the organization and powers of the People's Revolutionary Movement?"

74. Mr. SABI NGAMPOUB (Zaire) pointed out that the People's Revolutionary Movement had ceased to exist on 24 April 1990, and that more than 40 political groupings had expressed their intention of participating in the referendum planned for 1991.

75. The CHAIRMAN invited the members of the Committee to put questions on section XII of the list.

76. Mr. FODOR recalled that the Zairian delegation had said three parties (one centrist, one right-wing and one left-wing) would be legally authorized. He wished to know the criteria on the basis of which those parties would be selected, and who would decide whether a party belonged to the centre, the left wing or the right wing of the political spectrum.

77. Mr. POCAR, referring to article 22 of the Covenant, on freedom of association, and particularly paragraph 2 of that article, asked whether new associations had to be registered in Zaire and, if so, what procedure had to be followed. He wondered, in particular, how associations devoted to the promotion of human rights were treated: had there been any cases in which such associations had applied for authorization, and how had the authorities reacted?

78. He had already raised his second question during the consideration of Zaire's initial report, but had had no clear reply. Were there any restrictions on the right of foreigners to form associations in general and, more particularly, to form associations for the promotion of human rights?

79. His third question concerned current developments in Zaire since the announcement by the President of a shift to a multi-party system. He wished to know what practical consequences for the freedom of assembly and association would result from the decisions taken in May 1990 following President Mobutu's address. More specifically, he inquired whether those decisions would require additional legislation or just a change in the practical interpretation of the law.

80. The CHAIRMAN invited members of the Committee to ask questions about the rights of the child and the family, which were dealt with in articles 23 and 24 of the Covenant but not covered in the list of issues.

81. Mr. ANDO raised three questions concerning the child and the family. Firstly, he wished to know what was meant by "children who have been entrusted to the worker's care by the decision of a court of law" and by the expression "legal guardianship", which appeared in paragraph 8 of document CCPR/C/4/Add.11. Secondly, it was well known that, in predominantly agricultural areas, some children worked before the legally stipulated age: what protection did the law afford to those children? Thirdly, there was a high degree of marital instability in rural areas where customary marriage was practised. The Government of Zaire was endeavouring to promote monogamy and, in article 403 of the Family Code, had established the rule that "anyone who, under duress, has contracted a marriage, may request its annulment". However, under that same article, "the marriage cannot be impugned later than six months after the duress has ceased and, in any case, two years after the marriage has been duly celebrated" (CCPR/C/4/Add.1, para. 30). He requested a clarification of that provision.

82. Mr. MYULLERSON also inquired about the application of article 23 of the Covenant, concerning the family. The legislation concerning the family and the different conceptions of the family in Zaire had been outlined in document CCPR/C/4/Add.11, paragraph 8 of which contained the definition of the term "worker's family", as given in the Labour Code. He wished to know why a distinction had been made in regard to workers' families, and whether other categories of family existed. Paragraph 30 of the same document gave the text of article 336 of the Family Code, concerning marriage, which stated that "where there is coercion on the part of the parents, guardian or any other individual who in law exercises authority over the person, the latter may inform the family council, which shall make a ruling in the matter". Furthermore, under article 351, "each of the spouses, even if a minor, must personally consent to the marriage". Those provisions gave the impression that partners could not always freely express their wishes in regard to the conclusion of a marriage contract, and he therefore requested clarifications in that regard.

The meeting rose at 1 p.m.

UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.995
23 July 1990

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Thirty-ninth session

SUMMARY RECORD OF THE 995th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 18 July 1990, at 3 p.m.

Chairman: Mr. COORAY

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Zaire (continued)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 5) (continued)

Second periodic report of Zaire (CCPR/C/57/Add.1) (continued)

1. Mr. NDIAYE noted that the concept of the "natural child" had been excluded from Zaire's Family Code. The Code stipulated that every Zairian child had to have a father, and that no father had the right to reject his child, whether born in or out of wedlock. That principle was indeed an admirable one, but he wondered how in practice it was possible to compel a natural father to recognize his child. In the case of a marriage, the matter was normally decided on the basis of the well-known presumption pater est quem nuptiae demonstrant, but it was difficult to see how paternity could be legally established in the case of less regular unions.

2. Mr. SABI (Zaire) said a number of questions had been put that morning in connection with section XI of the list of issues (the effects of multipartism on the organization and powers of the MPR). One member had asked whether there was any legislation governing multipartism. In fact, an Act of 1965 governing non-profit-making organizations provided that anyone in Zaire could set up an association, which would be free to operate under its own system of management pending an order by the President of the Republic granting it civil personality. It had also been asked whether any human rights bodies had been set up in Zaire. There was in fact a Zairian National Human Rights League, which had applied for registration to the Ministry of Justice, and was now awaiting formal recognition by the President.

3. As to what would be the situation regarding political assemblies under the new system, such assemblies could be held in the normal way subject to the regulations in force, under which prior authorization was required before a public meeting could be held. That would continue to be the situation until the parties presented themselves for election the following year.

4. In reply to Mr. Fodor's question as to whether the three political parties authorized would be parties of the left, the right and the centre respectively, no objective criteria would be used to determine what programme each party should have. The only criterion would be the will of the people, who would make their choice between the various alternatives offered.

5. Mr. LUAMBA (Zaire), replying to Mr. Ndiaye, said that all countries which had inherited the Code Napoléon of 1804 would know that that Code distinguished between three types of natural child: the ordinary, the incestuous, and the adulterous. The Zairian legislature had decided that the whole concept of the natural child should be rejected. The principle adopted had been simply that a man who fathered a child, whether in or out of wedlock, should be made legally responsible for it. Before the adoption of the Family Code, the law had prohibited the father of a child born of an adulterous liaison from taking responsibility for it, but now paternal responsibility had been made a legal requirement. Mothers of such children could now apply for paternity to be established on the child's behalf and thus possessed a legal remedy. The exclusion from the Civil Code of the notion of the natural child thus made it possible for natural fathers to, as it were, redeem themselves.

6. Mr. Ando had asked what was the difference between the status of a child under legal guardianship and that of a child under customary guardianship. Children in the first category would include children who had lost their parents and were in effect in the care of the State, and children whose parents were living, but were not in a position to provide for their education. In such cases, a relative could take responsibility for the child by applying to the courts to secure legal guardianship.

7. Customary guardianship, on the other hand, was merely a matter of accepted practice, whereby, for example, it was normally assumed to be the duty of an uncle to care for his nephew.

8. Mr. Ando had asked at what age children in the rural areas were permitted to begin work. The law required that schooling should continue up to 14 years of age, but of course that did not mean that there were no drop-outs, particularly on the part of young girls, for the usual physiological reasons.

9. On the question of why it had been necessary for the Labour Code to define the concept of the worker's family, the intent of the legislature had been to ensure that the worker's responsibility was to his immediate family rather than to the "extended family" that was part of African tradition. Even the worker's family as defined by law might be very large, including not only the spouse and any children of the monogamous marriage, but also any common-law children of one or other of the spouses, and even children under guardianship. The law thus struck a balance between the Western concept of the "nuclear" family, and the African concept of the "extended" family.

10. The CHAIRMAN said the Zairian representative, in replying to Mr. Fodor's question, had perhaps not fully perceived its intent. What would interest members of the Committee would be to know how the people were to make their choice: would it be by referendum, or by a primary election? Had the measures that Zaire proposed to take in order to obtain the people's verdict been implemented in decrees, or in legislation of some sort, or were they still under study?

11. Mr. SABI (Zaire) said that there was currently a bill before parliament regulating how political parties were to be organized in the period preceding the elections that were to be held in January 1991: additional legislative measures would be taken at a later stage. He did not for the moment have any details of the contents of the bill, which was still under study.

12. Mr. LUAMBA (Zaire) explained that in his earlier statement he had meant simply that, in the event, the three new political parties might well turn out to be parties of the left, centre and right respectively. As to the criteria to be used in choosing between the parties, he would imagine that the people would be capable of making their own choice. The three parties eventually selected would be those that received the most support in the primary elections.

13. Mr. SABI (Zaire), referring to section XII, of the list of issues (participation of citizens in the conduct of public affairs), said that citizens now enjoyed much greater freedom, as well as much more responsibility, than under the one-party system: as a result, there would doubtless be much more enthusiasm for participation in public affairs. Under the previous régime, every citizen had automatically been a member of the

Party from the cradle to the grave, but following the new Act, each individual would be free to join the party of his choice. Zaire believed that the winning of that freedom had been a great achievement.

14. The CHAIRMAN invited general comments on the report of Zaire.

15. Mr. NDIAYE said members appreciated Zaire's willingness to engage in a dialogue with them, since that dialogue was the Committee's only opportunity, not to pass judgement on States, but rather to draw their attention to possible inconsistencies between the provisions of the Covenant and Government practice.

16. He regretted that on the present occasion Zaire's report had not been fully in accordance with the Committee's guidelines. The Secretariat could provide the documentation that would enable the delegation to ensure that the next periodic report was more in line with the pattern prescribed.

17. Despite the reforms that had been introduced in Zaire, it was clear that further improvements would be needed if certain forms of discrimination, notably against married women, were to be prevented. The fact that changes were likely to meet with resistance did not mean that they should not be made.

18. The Committee had been pleased to hear that the penalty of banishment was to be excluded from Zaire's Penal Code. Although penalties were of course necessary, some were less consistent than others with the most elementary humanitarian considerations.

19. The Committee had also welcomed the constitutional reform introducing multipartism in Zaire as a step forward in the democratic process. Reference was often made to the problems caused in Africa by conflicting tribal or ethnic loyalties. Those problems did exist, but their seriousness had been much exaggerated. Indeed, in Zaire, coexistence between different ethnic communities had been particularly harmonious even before independence.

20. Even if, to begin with, multipartism was limited to only three parties, the experiment was a worthwhile one. Senegal, too, had initially authorized only three parties, the Marxist Leninist Party, the Social Democratic Party and the Liberal Party. Eventually, however, it had decided to put no limit on the number of parties, and to leave the choice entirely to the people, without any harm being done to the country. Nevertheless, if multipartism was to become a reality, there was a need to encourage the setting up of an opposition. That was not easy in the case of States which, since their accession to independence, had been governed by a single party enjoying a monopoly of power. Steps would need to be taken to encourage freedom of the press and free access to the media, so that other voices besides those representing the Government could be heard.

21. Many members of the Committee had raised questions concerning the treatment of detainees. That, too, was a matter which presented difficulties for African countries, many of which had inherited problems from the colonial era. In the development process, it was often health and education which were considered the most urgent priorities, and reform of the penal system took second place. Nevertheless, it should be borne in mind that a penal system should make the prisoner better fitted to take his place in society, rather than make him a life-long enemy of that society.

22. He would like to lay particular stress on the importance of the Optional Protocol, to which Zaire had acceded. When the Committee received communications indicating that there had been violations of the Covenant, it was vital that the State party concerned should co-operate with it by supplying the information requested and respecting the Committee's findings.

23. In no case should the exercise by a Zairian citizen of his due right to address a communication to the Committee expose him to reprisals. The Committee had received two complaints of threats made against individuals simply for having been found in possession of human rights documents. Since Zaire had freely chosen to become a party to the Covenant, it should accept the consequences of that choice. Not only should it not penalize such individuals, but it should actively encourage any Zairian who considered his rights under the Covenant to have been violated to make representations to that effect, as part of its efforts to promote human rights.

24. Mr. WENNERGREN said that the present exercise had been a little unusual, involving the consideration of a report submitted, piecemeal, with additional documentation arriving up to almost the last minute. Nevertheless, the exchange had been fruitful; it was understandable that the Zairian delegation had not been able to reply to each of the many questions asked. The Committee now had a relatively good idea of developments since the submission of the initial report, and of the present state of affairs in Zaire. It was obvious that changes favourable to the promotion of human rights had indeed occurred, especially during the spring of the current year: the prospects seemed very hopeful. But that being said, he would voice once again some persistent major concerns.

25. Firstly, and all the more so because it seemed that capital punishment was being abandoned except under very particular circumstances, he failed to understand why persons condemned to death should have to wait so long - between six months and two years, the Committee had been told - before receiving an assurance of the commutation of the sentence. He trusted that the procedure for obtaining a Presidential pardon, which should be a relatively simple one, was not being drawn out merely with the aim of driving home to persons so convicted the seriousness of their offence: that would amount, if not to mental torture, at least to an extra punishment over and above the life imprisonment that would follow. He specifically requested the Zairian delegation to convey his concern on that matter to the Government.

26. Secondly, he remained anxious about respect for the regulations governing custody and pre-trial detention in the so-called "security services centres". The Committee had been told that practical difficulties such as distance made it impossible always to ensure that the regulations were being observed; it seemed in fact that matters were generally left to the discretion of the local administrative authorities, and that judicial controls and rules were sometimes relaxed. He trusted that steps would soon be taken to order things better.

27. Thirdly, he believed that the Penal Code in Zaire had, in the past, imposed so many restrictions and exercised so many pressures on the freedom of expression and its corollaries, such as the right to demonstrate peacefully, that the very essence of those concepts had been imperilled. Such a state of

affairs was obviously incompatible with the Covenant, and he hoped that improvements would soon be forthcoming in a matter so fundamentally important for democracy and the rule of law.

28. In conclusion, he observed with satisfaction that the Zairian authorities had embarked on the difficult road which led to compatibility with the Covenant and opened the way to its more forceful presence in the country's constitutional and legal affairs. For his part, he saw encouraging signs in the sky above that road, and would wish those who followed it every success.

29. Mr. MYULLERSON agreed with the previous speaker that the variety of material, both oral and printed, which had supplemented a formal report whose shortcomings - in comparison with the established guidelines - had been the subject of considerable adverse comment had revealed definite progress during the past few years, and more particularly in the past few months.

30. For example, the transition to political pluralism, together with other events, seemed positive, although that must be set against some lamentable occasions such as the student unrest and subsequent repression earlier during the current year.

31. The discussion had been relatively frank, but not all the questions put by the Committee had been answered. That might be excusable in certain instances, for example when the information necessary for a detailed reply was not immediately available, and responses were promised for later; but some of the Committee's concerns seemed to have simply been set aside - including, for example, its inquiry about follow-up to its views in respect of communications emanating from Zaire under the Optional Protocol.

32. He had already commended the transition to political pluralism in Zaire. But even if subsequent events demonstrated that the decision to limit the number of parties to three had satisfied the people, it should be observed more generally that actual numbers were not necessarily an indicator that a multi-party system was in fact in operation. Historical experience - in some countries of Eastern Europe in particular - had shown that so-called "multi-party" systems could exist in which a single party dominated, the others being no more than its "branch offices". Apart from that, and as far as Zaire was concerned, he was not convinced by the argument that the bloody confrontations of the 1960s could be attributed to the multiplicity of political parties or forces existing in the country at that time; the true causes lay, he believed, elsewhere.

33. On the subject of discrimination against women, which undoubtedly existed in Zaire, he said that the historical origins were clear, and agreed that it was not always possible to make directly for a given objective, especially when profoundly rooted traditions and religious beliefs were involved. Nevertheless, efforts should be made without delay to improve that situation and secure greater conformity with the Covenant, for example in respect of the legal rights of married women.

34. The Committee had not been fully enlightened with regard to the implementation of the Covenant in Zaire's legal system or its real influence; nor had it been assured that where contradiction existed, its provisions would take precedence over the country's laws. That was particularly important where issues such as discrimination against women were concerned.

35. Finally, he expressed the hope that conditions of custody and detention in police stations would be improved. Of course, the central authorities could not be held responsible for all shortcomings in that regard, but they should do their best without delay to ensure that international commitments were respected.

36. He wished the delegation and people of Zaire well, and hoped that economic progress would indeed be accompanied by improvements in the field of human rights.

37. Mr. ANDO acknowledged the efforts made by the Zairian delegation to make good the shortcomings of the printed report. The Committee's mandate was to identify problems and difficulties in the protection and promotion of human rights; the dialogue to that end sometimes involved delicate questioning that did not lend itself to easy replies; patience and understanding on the part of the reporting country were much appreciated.

38. He wondered whether the Zairian authorities might have mistakenly believed that it would be sufficient in the second periodic report merely to expand on explanations provided during consideration of the initial report, which had been a very detailed and solid document. In fact, each report was expected to be as comprehensive as its predecessor. Making that clear would perhaps help to ensure the proper preparation of the next report.

39. Like the previous speakers, he still had some residual concerns: they included such issues as the abuse of authority by the police and security forces; the de jure and de facto absence of equality between the sexes; and persisting limitations on the freedom of expression, including political expression. He had acknowledged with Mr. Ndiaye at the outset of the dialogue that Zaire was still suffering from the legacy of colonialism, which had left behind a society composed of diverse elements which inhibited the process of nation-building; it was possible that without the intervention of the United Nations during the 1960s, that process would have been still further delayed and the attendant suffering increased. But while the past might illuminate the present, it could not excuse the future; and that was where careful and patient implementation of the provisions of the Covenant would be important. In the absence of social order, the protection, and still less the promotion of human rights were hard to ensure. At one stage, a single-party political system might well have been inevitable to create that order; now, however, Zaire was moving into a new, experimental stage of multipartism, in which the advancement of human rights would constitute a real challenge as a balance was sought between collective order and individual liberty. He wished those involved every success in that exciting venture.

40. Popular understanding and awareness of the provisions and underlying principles of the Covenant were essential. Education, though it might take a long time, was necessary to the achievement of major social change. He hoped that the submission of Zaire's next periodic report would be an occasion for a more complete dialogue. He thanked the Zairian delegation once again, and wished its members a safe journey home.

41. Mrs. HIGGINS expressed appreciation of the oral exchange of views, which had done much to compensate for a somewhat unsatisfactory printed report. Certain improvements in the situation in Zaire were undeniably visible: the

move away from the pre-eminence of a single party; the release of prisoners of conscience; the amnesties granted in 1989; the revision of the Constitution; and the interesting first steps towards a form of pluralism.

42. It was also clear that the Department of Rights and Freedoms of the Citizen was doing worthwhile work, mostly - it seemed - by reacting to appeals addressed to it by various human rights groups and organisms. If it initiated more inquiries of its own volition and assumed a more strongly institutionalized monitoring role, it would do an even better job.

43. She had taken note of the argument that Zaire's problems were centred in tribalism and poverty, but there were many shortcomings that could not, in her view, be attributed to those causes. True self-determination of the people, from which all civil and political rights would stem, should be the fundamental goal.

44. She shared the impression drawn by Mr. Myullerson of positive and negative elements intermingled in a situation that remained somewhat unclear. If she deplored the repression of student and other demonstrations, she welcomed the clarification of the situation of the Jehovah's Witnesses as a result of the revision of the Constitution. She had also been impressed to hear about arrangements, including the training of inspectors, to improve conditions in detention centres, which certainly continued to give grounds for concern. She looked forward to the formal announcement of the annulment of the decree on banishment.

45. That being said, perhaps some proposals for still further improvement would be in order. For example, persons arrested should be allowed immediate access to lawyers. Recent signs of increasing independence of the judiciary should be encouraged. Legal provision should be made for the legality of detention to be challenged in the courts; and there should be a requirement of release through the intervention of the law if persons were not brought promptly before a judicial officer.

46. Actual achievements would, finally, be the yardstick of declared good intentions. In that context, she remained deeply disturbed at the continuing absence of a reply to the Committee's inquiries concerning communications Nos. 138/1983, 241/1987 and 242/1987. If a State party chose to participate in an international system, but declined to provide requested information, the sincerity of its intention to co-operate would inevitably be placed in doubt. She would urgently and sincerely ask that that should be borne in mind and hoped that the Committee would very shortly receive answers to its questions on the communications.

47. She thanked the Zairian representatives for their participation in the dialogue, and expressed the hope that the Committee's comments and suggestions would be of service to their country as it set out on a new path.

48. Mr. FODOR said that the shortcomings of the printed report had placed an additional burden on the Zairian delegation; its members had demonstrated their willingness to co-operate with the Committee in providing substantial information on the implementation of the provisions of the Covenant, and had indeed made a valuable contribution to the dialogue. Nevertheless, many causes for concern remained: imperfect legislation was, in part, responsible, as was inadequate practice.

49. In his turn, he would single out just a few of the outstanding issues. Firstly, concerning the transition from a single-party to a multi-party system, he would suggest that the process should be untrammelled. The imposition of a limit on the number of parties might work initially, but it could lead in the longer term to a return to a single-party structure.

50. Secondly, with regard to the unequal treatment of women, much improvement was clearly called for, both in legislation and in practice. He could not agree that there was no point in changing laws until customs changed. The two were interrelated and initial steps in legal reform should be delayed no longer, particularly since that was an easier task than the modification of deeply rooted customs: new laws would, he submitted, stimulate the latter process.

51. The appalling events in Lumumbashi had already been evoked at some length. He would merely add that an occurrence of such gravity could not have been fortuitous. The underlying causes should be thoroughly analysed and the necessary conclusions drawn if a recurrence was to be avoided. In all probability, inadequate discipline in the police and the armed forces, and the abuse of their authority, were closely related to the events alluded to. He would consequently hope that the Government's efforts to improve the situation in that respect would be successful.

52. Finally, he expressed the hope that the next periodic report of Zaire would be drafted in full accordance with the Committee's guidelines and would reflect the improvements that were called for. He thanked the delegation for its co-operation, and wished its members a safe journey home.

53. Mr. POCAR thanked the delegation of Zaire for its co-operation with the Committee. He welcomed the constitutional reforms in Zaire and its recent decision to switch to a multi-party system; nevertheless, a whole series of negative features were still evident in the country. Like Mr. Fodor, he had the impression that not only was there a deficiency in the laws, but even when the laws existed their application was not complete. Events as serious as those which had occurred in May in Lumumbashi as well as a whole series of similar occurrences revealed a range of violations of the human rights guaranteed by the Covenant, including the right to life, the prohibition of torture, liberty and security of person, the right of assembly and freedom of association and the freedom of opinion and expression. There thus appeared to be a strong probability of violations in Zaire. The Government was taking action to reduce it, and identification and punishment of those responsible was essential, but that alone could not put an end to such cases. The adoption of positive measures was all the more necessary in that such events could not happen without public authorities at the central or regional level being involved. The attribution of excessive powers at all levels of executive authority should be altered and the system of control of the executive should be strengthened.

54. He also shared the concerns expressed by other Committee members with regard to the fact that a multi-party system limited to three parties might not really change the one-party system, since those electors who did not find their natural place in any of those parties would not have the possibility of participating freely in the management of public affairs.

55. Part IV of the second periodic report had mentioned the "vitalization" of co-operation between Zaire and the international institutions concerned with human rights. He welcomed that co-operation, as shown with regard to the obligation of States parties under article 40 of the Covenant, but he could not remain silent about the fact that it had not been shown in the same way with regard to the Optional Protocol. He hoped that a clear reply would shortly be sent to the Committee regarding the measures adopted by the Government of Zaire to follow up the Committee's views on the communications concerning Zaire which it had examined.

56. Lastly, he congratulated the Zairian delegation on its replies to the Committee's questions and hoped that the Minister for Rights and Freedoms of the Citizen would do his best to improve the human rights situation in Zaire, taking into account the Committee's observations.

57. Mr. COORAY also thanked the delegation of Zaire for engaging in a constructive dialogue with the Committee. Initially the dialogue had been handicapped because the report had been submitted in an unorthodox manner, but the introductory statement and the answers by the Zairian delegation had substantially relieved the situation. In recent years there had been a number of encouraging positive developments in Zaire. He would not repeat his questions except the fundamental one as to the compatibility of the limitation on the number of political parties with article 22 of the Covenant. With regard to Zairian judges, he had no doubts about their independence, but that independence should be reinforced by certain legal and constitutional provisions that were found in many countries. Independence of judges could not be assumed; it had to find its legal and constitutional basis with regard to judges not only of the Supreme and Appeals Courts but also of the Magistrate's and District Courts. Tenure of judges had to be legally guaranteed; their appointment, the procedures for their removal and the prohibition of a reduction in their salaries should also be enshrined in the law. With regard to sex discrimination emanating from the provisions of the Civil, Family and Penal Codes, the need to award adequate compensation to victims of the violent events in Lumumbashi in May 1990, the necessity for ensuring effective protection against ill-treatment of prisoners and detainees and the question raised by Mr. Ndiaye and Mrs. Higgins regarding follow-up by Zaire to cases considered under the Optional Protocol, he hoped that full answers would be given in Zaire's third periodic report.

58. He welcomed the establishment of the Department of Rights and Freedoms of the Citizen, which should be expanded and given more powers. In the three years of the Department's existence, co-operation between Zaire and the Committee had increased. Coming from a developing country himself, he understood the difficulties faced in the protection of human rights in pluralistic societies; nevertheless, Zaire should realize that it had a solemn obligation to ensure to all citizens their rights under the Covenant. Recent steps taken by Zaire in that direction were encouraging.

59. The CHAIRMAN, summing up the consideration of Zaire's second periodic report, said it seemed that the inadequacy of the report might have been due to confusion, often apparent in the media, between the Human Rights Committee and various other human rights bodies in the United Nations system, particularly the Commission on Human Rights. However, Zaire now seemed to be convinced of the need to prepare a report in compliance with the Committee's guidelines in order to meet its obligations under article 40 of the Covenant.

60. In spite of the inadequacy of the report, it had been possible, because of the particular competence of the Zairian delegation, to engage in a fruitful dialogue. Since its previous report, Zaire had not yet quite complied with articles 22 and 25 of the Covenant in regard to the institution of political pluralism, but it was on the way to doing so. Mr. Ndiaye had recalled that his own country, through its experience with the Committee, had decided to open its political system to one and all. The a priori limitation of political parties to three might be counterproductive, and it might be asked why the choice of the number of parties was not left to the people themselves. Whatever the number of people elected in whatever number of parties, Governments in many States were able to conclude alliances to govern the country.

61. Progress had also been noted in plans to write the question of banishment out of the statute-book; there were encouraging signs of amnesties having been granted and a ministry of human rights had been created, although all other means had to be exhausted before it could intervene. Much concern had been expressed over detention by security forces and flagrant violations of the law. Freedom of expression had been violated, with even basic documents relating to human rights being considered subversive. Concern had been expressed over the events at Lumumbashi, over discrimination against women and over the failure of Zaire to inform the Committee of the measures it had taken to remedy the violations found by the Committee in three cases considered under the Optional Protocol. He hoped that the Committee would soon be informed what action the Zairian Government had taken in those cases.

62. All in all, however, the dialogue had been constructive and fruitful. He awaited with interest the third periodic report of Zaire, which had originally been due in January 1988, but to which the Committee would now have to assign a new date for submission.

63. Mr. SABI (Zaire), thanking the Committee for its friendly words, said that Zaire would take account of the comments made with a view to complying with its obligations under the Covenant. With regard to Mr. Pocar's remarks concerning large-scale violations of human rights in Zaire, he said that, since Zaire had become a Member of the United Nations, it had done its utmost to prevent such occurrences, but that if errors were found they were always condemned: all those implicated in the Lumumbashi affair would have to answer to justice.

64. With regard to political parties, the discussion as to the number of parties necessary in a democracy could be prolonged endlessly. The United States was a great country and had only two political parties; Belgium, a smaller country than Zaire, had many more. Must one therefore conclude that there was less democracy in the United States than in Belgium? What mattered was that an experiment was being tried and, with the Committee's advice, it would be possible to see how that experiment could be made to work, given that Zaire had the political will to change the old system, which had been altered by the Constitution adopted on 5 July 1990. Human rights were of the greatest concern to the people of Zaire, since victims of illegal arrest and arbitrary detention were their brothers. However, to put human rights into practice was not easy for developing countries; he had pointed out the constraints, even in travelling from one place to another, because of the lack of vehicles, fuel and planes. In order to inform citizens of their rights and liberties,

documents had to be printed and use had to be made of the radio. All that cost money. The possibility had to be envisaged of giving all countries ready to adopt the reign of liberty sufficient resources to confront such problems.

65. Mr. LUANBA (Zaire), referring to the question of the the communications emanating from Zaire, said that the Zairian Government had unfortunately sent a reply to the Commission on Human Rights and that its answer should have been passed on to the Committee. If the interested parties thought that they had suffered injury, they were entitled to institute proceedings before the courts with a view to obtaining redress. It was not for the Government to compensate someone who had not brought a case. With regard to the equality of the sexes, he recalled that by African tradition the wife could not succeed her deceased husband, but that under the Family Code it was now possible for her to do so in Zaire. The law should be used to improve the status of women, but progress had to be made gently.

66. The CHAIRMAN took note of Mr. Luamba's remarks on communications and announced that the Committee had concluded its consideration of the second periodic report of Zaire.

The meeting rose at 5.05 p.m.